MICHIGAN

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CONSTITUTION

OF THE

STATE OF MICHIGAN

1850

ANNOTATED FOR THE USE OF THE CONSTITUTIONAL CONVENTION OF 1907

LANSING, MICHIGAN
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The bills of rights in American constitutions have not been drafted for the introduction of new law, but to secure old principles against abrogation or violation. They are conservatory instruments rather than reformatory. Weimer v. Bunbury, 30/213.

The present constitution was not the formation of a new government, but the continuation of one formed under the previous constitution, whose supposed or real defects it was intended to correct. Streeter v. Paton, 7/346.

It is a fair presumption that the framers of the constitution, in adopting legal terms, had reference to their strict legal and technical import. Slaughter v. People, 2 Doug. 336.

No constitutional provision will be held as merely directory. People v. Dettenthaler, 118/595.

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OF THE

STATE OF MICHIGAN.

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NOTE.—The references to the Michigan reports are indicated, as in the Compiled Laws, by the use of the oblique dash. Thus: 118/595 means 118 Mich. p. 595.

CONSTITUTION

OF THE

STATE OF MICHIGAN.

THE PEOPLE OF THE STATE OF MICHIGAN DO ORDAIN THIS CONSTITUTION.

ARTICLE I.

Boundaries:

(1) The state of Michigan consists of and has jurisdiction over the territory embraced within the following boundaries, to-wit: Commencing at a point on the eastern boundary line of the state of Indiana, where a direct line drawn from the southern extremity of Lake Michigan to the most northerly cape of Maumee bay shall intersect the same—said point being the northwest corner of the state of Ohio, as established by act of congress, entitled "An act to establish the northern boundary line of the state of Ohio, and to provide for the admission of the state of Michigan into the union upon the conditions therein expressed," approved June fifteenth, one thousand eight hundred and thirty-six, thence with the said boundary line of the state of Ohio, till it intersects the boundary line between the United States and Canada in Lake Erie, thence with the said boundary line between the United States and Canada through the Detroit river, Lake Huron and Lake Superior to a point where the said line last touches Lake Superior; thence in a direct line through Lake Superior to the mouth of the Montreal river; thence through the middle of the main channel of the said Montreal river to the head waters thereof; thence in a direct line to the center of the channel between Middle and South Islands in the Lake of the Desert; thence in a direct line to the southern shore of Lake Brule; thence along said southern shore and down the river Brule to the main channel of the Menominee river; thence down the center of the main channel of the same to the center of the most usual ship channel of the Green Bay of Lake Michigan; thence through the center of the most usual ship channel of the said bay to the middle of Lake Michigan; thence through the middle of Lake Michigan to the northern boundary of the state of Indiana as that line was established by the act of congress of the nineteenth of April, eighteen hundred and sixteen; thence due east with the north boundary line of the said state of Indiana to the northeast corner thereof; and thence south with the eastern boundary line of Indiana to the place of beginning.

* These boundaries are virtually the same as those prescribed in the act of congress of June 15, 1836, providing for the admission of Michigan into the union, and assented to by the second convention of assent, December 15, 1836. (See C. L. 1897, pp. 63, 67.) The constitution of 1835 contained no mention of boundaries. The acts of the territorial council, providing for the formation of a state govern-

ment, and the constitution adopted contemplated only the territory described in the act of congress of January 11, 1805, which organized the territory. That included only the lower peninsula and such part of the upper as lay east of a line running north from the northern extremity of Lake Michigan. Prior to this time, congress, by an act approved April 19, 1816, had taken a ten mile strip from the southern part of the territory and given it to Indiana. Congress had also made two additions to the territory of Michigan: (1) By act approved April 18, 1818, all of the present state of Wisconsin, the west half of the upper peninsula and all of Minnesota east of the Mississippi river and a line running north from the head of that river; and (2) by an act approved June 28, 1834, the eastern half of the two Dakotas, the western part of Minnesota and all of Iowa, as those states are now defined. All that additional territory, however, was rejected in the formation of the state government. No objection, beyond a mere protest, was made over the loss of the Indiana strip; but the fixing of the northern boundary of Ohio, so as to take in a narrow strip of Michigan's southern territory, was vigorously resented, resulting in the "Toledo war."

ARTICLE II.

Seat of government:

(2) The seat of government shall be at Lansing, where it is now established.

Detroit was the seat of government of the territory and state until 1847, when the legislaure, in compliance with a constitutional injunction (Const. 1835, art. xii, sec. 9) located a permanent seat. Act 60 of 1847, located it "in the township of Lansing" and act 65 provided for the platting of a village to be known as the "town of Michigan." Act 237 of 1848 changed the name to Lansing.

ARTICLE III.

DIVISION OF THE POWERS OF GOVERNMENT.

Three departments:

(3) SECTION 1. The powers of government are divided into three departments: The legislative, executive and judicial.

The powers of government are divided into three departments to effectuate the great objects of government—the security of the citizen's rights and privileges and the guaranty of his liberty and safety. All the powers of government are distributed amongst these departments. Williams v. Mayor, 2/560, 564. And all general governmental powers must be exercised by these departments (People v. Collins, 3/343, 365, 414; People v. Gallagher, 4/244, 254; People v. Saulsbury, 134/537, 544,) which are of equal dignity and, within their respective spheres, are equally independent. Sutherland v. Governor, 29/320, 324. This division is accepted as a necessity in all free governments. Id. 29/320, 324.

Independence of departments:

(4) SEC. 2. No person belonging to one department shall exercise the powers properly belonging to another, except in the cases expressly provided in this constitution.

The provisions of this article are very positive and are found in nearly every American constitution. State Tax Law Cases, 54/350, 390. The design is to keep the departments separate. People v. Collins, 3/343, 404; Houseman v. Kent Circuit Judge, 58/364, 367; Locke v. Speed, 62/408, 413. The very apportionment of power to one department is a prohibition of its exercise by another. Butler v. Supervisors of Saginaw County, 26/21, 27; Sutherland v. Governor, 29/320, 325.

Relation of departments discussed. Sutherland v. Governor, 29/320.

Legislative, executive, administrative and judicial power distinguished. Shumway v. Bennett 29/451.

Administrative acts distinguished from judicial. Fuller v. Attorney General, 98/96.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

Legislature:

(5) SECTION 1. The legislative power is vested in a senate and house of representatives.

Relation of this department to the others discussed in Sutherland v. Governor, 29/320.

Grant of power.—Whole law-making power transferred to senate and house. People v. Collins, 3/343,349, 365, 366, 367, 414; Williams v. Mayor, 2/560, 564; People v Hanrahan, 75/611, 616. Limited only by the restrictions and regulations contained in the federal and state constitutions. Mich. St. Bank v. Hastings, 1 D/225, 234; Scott v. Swart's Ex'rs, 1/295, 307; Williams v. Mayor, 2/560, 564; People v. Collins, 3/343, 349; People v. Gallagher, 4/244, 254; Sears v. Cottrell, 5/251, 258; Attorney General v. Marr, 55/445, 450; Maynard v. Canvassers, 84/228, 253.

Delegation of legislative power.—General law-making power cannot be delegated. People v. Collins, 3/343, 350, 366, 367, 400, 416, 417, 427; State Tax Law Cases, 54/350, 398, 455. The authority conferred by act 149 of 1881, upon the insurance commissioner to prescribe a standard form of insurance policy and to change the same "whenever they shall deem it necessary" is an unconstitutional delegation of power. King v. Concordia Fire Ins. Co., 140/258. Legislature cannot delegate to private corporations power to make laws for the discharge of offenders. Senate of Happy Home Clubs v. Alpena Supervisors, 99/117, 120. Nor power to delegate to courts power to "authorize a trial by jury of a less number than twelve men." McRae v. Railroad Co., 93/399. *Acts sustained*: Act 111 of 1889 (C. L. 5861), authorizing board of fish commissioners to grant permits to catch fish for propagation at times and in

manner prescribed by the board. People v. Brooks, 101/98. Act 47 of 1893 (C. L. 4479), authorizing the state board of health to make rules for the disinfection of persons coming from a country where a contagious disease exists and making a refusal a misdemeanor. Hurst v. Warner, 102/238. Act 415 of 1893, conferring power on the board of park commissioners as to the construction of improvements. Turner v. City of Detroit, 104/326. Act 627 of 1905, submitting to the electors of the territory involved the question of its annexation to the city of Detroit. Attorney General v. Springwells Twp. Board, 143/523.

As to delegation of local legislative and administrative powers to municipalities, see section 38 of this article.

Senate and senatorial districts:

(6) SEC. 2. The senate shall consist of thirty-two members. Senators shall be elected for two years and by single districts. Such districts shall be numbered from one to thirty-two inclusive, each of which shall choose one senator. No county shall be divided in the formation of senate districts, except such county shall be equitably entitled to two or more senators.

The provision against the division of a county indicates not that the county is made the basis of apportionment, but that portions of different counties must not be included in the same district, and that when a county is entitled to two or more senators, the legislature must make such apportionment within the county according to population. Williams v. Secretary of State, 145/447.

The only counties as yet affected by this provision are Wayne and Kent.

The state cannot be divided into senatorial districts with mathematical exactness, nor does the constitution require it. It requires the exercise on the part of the legislature of an honest and fair discretion in apportioning the districts so as to preserve, as nearly as may be, the equality of representation. Giddings v. Secretary of State, 93/1, 8.

Senators in other states.—Ala., 35; Ark., 35; Cal., 40; Colo., 35; Conn., 35; Del., 17; Fla., 32; Ga., 44; Idaho, 21; Ills., 51; Ind., 50; Iowa, 50; Ks., 40; Ky., 38; La., 41; Maine, 31; Md., 27; Mass., 40; Minn., 63; Miss., 45; Mo., 34; Mont., 27; Neb., 33; Nev., 17; N. H. 24; N. J., 21; N. Y., 51; N. C., 50; N. Dak., 40; O., 37; Oregon, 30; Pa., 50; R. I., 38; S. C., 41; S. Dak., 45; Tenn., 33; Tex., 31; Utah, 18; Vt., 30; Va., 40; Wash., 42; W. Va., 30; Wis., 33; Wyoming, 23.

House of representatives and districts:

(7) SEC. 3. The house of representatives shall consist of not less than sixty-four nor more than one hundred members. Representatives shall be chosen for two years and by single districts. Each representative district shall contain, as nearly as may be, an equal number of inhabitants, exclusive of persons of Indian descent who are not civilized or are members of any tribe, and shall consist of convenient and contiguous territory. But no township or city shall be divided in the formation of a representative district. When any township or city shall contain a population which entitles it to more than one representative, then such township or city shall elect by general ticket the number of representatives to which it is entitled. Each county hereafter organized, with such territory as may be attached thereto, shall be entitled to a separate representative when it has attained a population equal to a moiety of the ratio of representation. In every county entitled to more than one representative the board of supervisors shall assemble at such time and place as the legislature shall prescribe and divide the same into representative districts, equal to the number of representatives to which such county is entitled by law, and shall cause to be filed in the offices of the secretary of state and clerk of such county, a description of such representative districts, specifying the number of each district and population thereof, according to the last preceding enumeration.

Amendment of 1869–70. As at first adopted this section required each district to contain "an equal number of *white* inhabitants and civilized persons of Indian descent not members of any tribe."

No township has as yet come under the provision against division and only three cities—Detroit, Grand Rapids and Saginaw.

The power to subdivide a county into representative districts is vested in the board of supervisors and not in the legislature. Houghton Supervisors v. Blacker, 92/638, holding void act 109 of 1891, which put certain townships of Houghton county in a district with Keweenaw county.

The provision as to contiguous territory does not require contact by land, but portions of territory, though separated by wide reaches of navigable deep waters, may be considered contiguous. Houghton Supervisors v. Blacker, 92/638.

Number of representatives.—Under this section the representatives have numbered as follows: In 1853, 71; 1855, 72; 1857, 80; 1859, 81; 1861, 83; 1863–1907, 100.

Representatives in other states.—Ala., 105; Ark., 100; Cal., 80; Colo., 65; Conn., 255; Del., 35; Fla., 68; Ga., 175; Idaho,51; Ills., 153; Ind., 100; Iowa, 108; Ks., 125; Ky., 100; La., 116; Maine, 151; Md., 101; Mass., 240; Minn., 119; Miss., 133; Mo., 142; Mont., 72; Neb., 100 Nev., 40; N. H., 392; N. J. 60; N. Y., 150; N. C., 120; N. Dak., 100; O., 121; Oregon, 60; Pa., 207; R. I., 72; S. C., 124; S. Dak., 87; Tenn., 99; Tex., 133; Utah, 45; Vt., 246; Va., 100 Wash., 104; W. Va., 87; Wis., 100; Wyoming, 50.

State census; apportionment:

(8) SEC. 4. The legislature shall provide by law for an enumeration of the inhabitants in the year eighteen hundred and fifty-four and every ten years thereafter; and at the first session after each enumeration so made, and also at the first session after each enumeration by the authority of the United States, the legislature shall rearrange the senate districts and apportion anew the representatives among the counties and districts, according to the number of inhabitants, exclusive of persons of Indian descent who are not civilized or are members of any tribe. Each apportionment and the division into representative districts by any board of supervisors shall remain unaltered until the return of another enumeration.

Amendment of 1869–70. As at first adopted the section required an apportionment "according to the number of *white* inhabitants and civilized persons of Indian descent, not members of any tribe."

The enumeration intended is an enumeration of the population by either the federal or state authority. Bay County v. Bullock, 51/544, 546.

The duty of dividing the state and the counties thereof into senatorial districts is reposed in the legislature, and the court only assumes to determine whether, in a given case, the legislature has exercised a constitutional discretion. Williams v. Secretary of State, 145/447.

Districts unalterable.—Except as prohibited by the constitution the legislature can change legislative districts, and the power to do so is not lodged exclusively in the boards of supervisors. Such changes may be made after a new enumeration and prior to the new apportionment. People v. Bradley, 36/447. A law which, by the change of city boundaries, transfers electors from one district to another is as much an alteration as it would be if the same result were brought about in a different way. Attorney General v. Holihan, 29/116. But the organization of a new county out of an entire representative district is not prohibited. Bay County v. Bullock, 51/544. And an act consolidating two cities in different districts, but preserving the district boundaries and the manner of electing representatives, is valid. Smith v. Saginaw, 81/123. Local act 627 of 1905, given immediate effect, but attaching certain territory to Detroit April 1, 1906, is valid, it being presumed that the legislature had it in view when the apportionment act of 1905 was passed, and it appearing that the legislative intention was that the rights of the electors in such territory should meanwhile be determined by the old law. Attorney General v. Springwells Twp. Board, 145/523.

Qualifications of members; removal:

(9) SEC. 5. Senators and representatives shall be citizens of the United States and qualified electors in the respective counties and districts which they represent. A removal from their respective counties or districts shall be deemed a vacation of their office.

Certain officers ineligible:

(10) SEC. 6. No person holding any office under the United States [or this state] or any county office, except notaries public, officers of the militia and officers elected by townships, shall be eligible to or have a seat in either house of the legislature, and all votes given for any such person shall be void.

The words "or this state" were in the section as adopted by the convention, but were omitted in the enrollment. The same language is used in art. v., sec. 15, relative to the eligibility to the office of governor.

In construing this provision of the constitution for themselves the two houses have uniformly refused to unseat a member elect, who, at the time of his election, held a county office, the term of which ended before he took his seat as a legislator. For majority and minority reports on this subject see Senate Journal 1885, pp. 157–163.

Privilege from arrest, civil process and question:

(11) SEC. 7. Senators and representatives shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest. They shall not be subject to any civil process during the session of the legislature, or for fifteen days next before the commencement and after the termination of each session. They shall not be questioned in any other place for any speech in either house.

Although misdemeanors are not specifically mentioned, yet it has been determined that the expression of the exception in this section is intended to embrace all criminal proceedings whatsoever. Cushing, Law and Prac. of Leg. Assemblies, §567.

It is provided by statute that "no officer of the senate of house of representatives, while in actual attendance upon the duties of his office, shall be liable to arrest on civil process." C. L. 34.

"*King*" *Strang's case.*—In 1853 the house of representatives held that the arrest of Representative Strang, on an old criminal warrant, just as he was about to take his seat at the opening of the session, was made simply to hinder him from taking his seat and was a breach of the privileges of the house. House Journal 1853, pp. 13–14, 16–17, 21.

Quorum; adjournment; compulsory attendance:

(12) SEC. 8. A majority of each house shall constitute a quorum to do

business; but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as each house may prescribe.

House.—In art. iv, sec. 10, of the old constitution, the word "house" was held to mean all those members belonging to such house. Southworth v. P. & J. R. Co., 2/287.

Quorum.—In passing upon the question of whether a quorum was present when certain legislative action was taken, the courts will be controlled by what appears on the journal, parol evidence not being admissible to alter or contradict that record. Auditor General v. Menominee Supervisors, 89/552.

Adjournment from day to day.—This provision is an innovation upon common law. Strictly speaking, fewer than a quorum could adjourn only *sine die*, leaving the body to assemble at its next regular meeting as fixed by law. To save such inconvenience in case of a legislature, the above provision has been incorporated into nearly all the American constitutions, and the right of a smaller number than a quorum to adjourn from day to day is deemed inherent in all legislative bodies. Cushing, Law and Prac. of Leg. Assemblies, § 254.

Officers; rules of procedure; expulsion:

(13) SEC. 9. Each house shall choose its own officers, determine the rules of its proceedings and judge of the qualifications, elections and returns of its members, and may, with the concurrence of two-thirds of all the members elected, expel a member. No member shall be expelled a second time for the same cause, nor for any cause known to his constituents antecedent to his election; the reason for such expulsion shall be entered upon the journal, with the names of the members voting on the question.

House.—In art. iv, sec. 10, of the old constitution, it was held that the word "house" in the clause, "each house shall choose its own officers," meant a majority of all the members belonging to each house; also, that in all cases where a power is conferred, or a duty or a restriction imposed, upon either branch of the legislature by the general designation "house," without any qualification expressed or necessarily implied from the language employed, that the term means the legislative body or quorum to do business; comprising a majority of the members elected to and qualified to act as members of such body. Southworth v. P. & J. R. Co., et al., 2/287, 288.

Officers.—The secretary and clerk are the mere creatures of the respective bodies. Turnbull v Giddings, 95/314, 317.

Judge of elections.—The decision of each house as to its own membership is conclusive and not subject to review by the courts. People v. Mahaney, 13/481, 493; F. & F. P. R. Co. v. Woodhull, 25/99, 103; Aud. Gen. v. Supervisors, 89/552, 565, 580, 586, 589; Wheeler v. Canvassers, 94/448.

Expulsion.—The only case of expulsion in Michigan occurred in 1887, when the house of representative proceeded in the most formal manner.

Journal; yeas and nays; dissent and protest:

(14) SEC. 10. Each house shall keep a journal of its proceedings and publish the same except such parts as may require secrecy. The yeas and nays of the members of either house on any question, shall be entered on the journal at the request of one fifth of the members elected. Any member of either house may dissent from and protest against any act, proceeding or resolution which he may deem injurious to any person or the public, and have the reason of his dissent entered on the journal.

Journal.—The duty of keeping the journal is imposed upon the house and not upon its officers, Turnbull v. Giddings and Barkworth v. Tateum, 95/314. The journal record is conclusive and cannot be disputed by parol testimony. Att'y Gen. v. Rice, 64/385; Hart v. McElroy, 72/446; Sackrider v. Supervisors, 79/59; Aud. Gen. v. Supervisors, 89/552. But a manifest error on the face of the journals corrected in the "errata" by the secretary, may be disregarded and the correction followed. People v. Burch, 84/408. The courts will take judicial notice of the journals and examine them to see whether acts have been passed in accordance with constitutional requirements. Green v. Graves, 1 Doug. 351. People v. Mahaney, 13/481; People v. Supervisors, 16/254; Att'y Gen. v. Joy, 55/94; Callaghan v. Chipman, 59/610; Att'y Gen. v. Rice, 64/385; Hart v. McElroy, 72/446;: Sackrider v. Supervisors, 79/59; Rode v. Phelps, 80/598; People v. Burch, 84/408; Aud. Gen. v. Supervisors, 89/552; Common Council v. Assessors, 91/78. But judicial notice is not for courts alone; the legislature must also take notice of the journals and is bound by what they contain. Att'y Gen. v. Joy, 55/94.

Dissent and protest.—A protest is a personal privilege merely, having no force as legislative action or as a statement of fact contradicting the journal, and cannot be resorted to to nullify a legislative act. Aud. Gen. v. Supervisors, 89/552. The duty to receive such protests is imposed upon the houses and, if they refuse, their officers cannot perform that duty without their concurrence. Turnbull v. Giddings and Barkworth v. Tateum, 95/314.

Elections in houses; nominations to senate:

(15) SEC. 11. In all elections by either house or in joint convention the votes shall be given *viva voce*. All votes on nominations to the senate shall be taken by yeas and nays, and published with the journal of its proceedings.

Open doors; adjournment over three days:

(16) SEC. 12. The doors of each house shall be open unless the public welfare requires secrecy. Neither house shall, without the consent of the

other, adjourn for more than three days, nor to any other place than where the legislature may then be in session.

Adjournment for more than three days.—Such adjournment, if taken, does not *ipso facto* work a dissolution of the legislature. This provision is to be taken in connection with the provision giving the minority the right to adjourn from day to day and compel the attendance of absent members, for the wrongful act of a majority illegally absenting themselves can be so corrected by the minority. W. P. P. R. Co. v. U. P. R. Co., 9 Philadelphia Rpts, 495.

Origin of bills:

(17) SEC. 13. Bills may originate in either house of the legislature.

Approval of bills; veto and reconsideration:

(18) SEC. 14. Every bill and concurrent resolution, except of adjournment, passed by the legislature, shall be presented to the governor before it becomes a law. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, which shall enter the objections at large upon their journal, and reconsider it. On such reconsideration if two-thirds of the members elected agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall be reconsidered. If approved by two-thirds of the members elected to that house, it shall become a law. In such case the vote of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journals of each house respectively. If any bill be not returned by the governor within ten days, Sundays excepted, after it has been presented to him, the same shall become a law, in like manner as if he had signed it, unless the legislature, by their adjournment, prevent its return, in which case it shall not become a law. The governor may approve, sign and file in the office of the secretary of state, within five days after the adjournment of the legislature, any act passed during the last five days of the session, and the same shall become a law.

Approval.—A law must have the concurrence of the three branches of the legislative department, and if it differs in an essential particular when presented to the governor for his signature from the bill passed by the two houses, there is difficulty in saying that it has been concurred in by all. People v. Onondaga Supervisors, 16/254, 257. Act 213 of 1889, regulating the liquor traffic was held void, because the copy approved by the governor differed radically from the bill passed by the two houses. Rode v. Phelps, 80/598. A bill not constitutionally passed can never become a law by its being signed by the governor and published with the statutes. Attorney General v. Joy, 55/94. A bill passed previous to the last five days of the session and signed after the adjournment, but within ten days from its passage, became a law. City of Detroit v. Chapman, 108/136.

Compensation; extra sessions; mileage; copies of laws and documents:

(19) SEC. 15. The compensation of the members of the legislature shall be three dollars per day for actual attendance and when absent on account of sickness, but the legislature may allow extra compensation to the members from the territory of the upper peninsula, not exceeding two dollars per day during a session. When convened in extra session their compensation shall be three dollars a day for the first twenty days and nothing thereafter; and they shall legislate on no other subjects than those expressly stated in the governor's proclamation, or submitted to them by special message. They shall be entitled to ten cents and no more for every mile actually traveled in going to and returning from the place of meeting, on the usually traveled route, and for stationery and newspapers not exceeding five dollars for each member during any session. Each member shall be entitled to one copy of the laws, journals and documents of the legislature of which he was a member, but shall not receive, at the expense of the state, books, newspapers or other perquisites of office not expressly authorized by this constitution.

Amendment of 1859–60. As at first adopted this section provided a compensation of $3 per day "for the first 60 days of the session of the year 1851 and for the first 40 days of every subsequent session and nothing thereafter." The provision relative to extra compensation for the upper peninsula members seems to have been brought in by the amendment of 1860, from art. xix, sec. 5.

The word day covers whatever portion of the twenty-four hours the legislators choose to remain in session. Robinson v. Dunn, 77 Cal., 473. The mileage is to be determined by the officers whose duty it is

to make the certificate—the president and secretary of the senate and the speaker and clerk of the house. Cook v. Auditor General, 129/48, 51.

Upper peninsula members.—Extra compensation to those members has been paid at every regular session except two, but has seldom been paid at extra sessions.

Compensation in other states.—Per diems are paid as follows: $3—Ks., Oregon, Vt.,; $4—Ala., Ga., N. C., S. C., Tenn., Utah, Va.; $5—Ark., Del., Idaho, Ky., La., Md., Minn., Mo.,(70 days, $1 thereafter), Neb., N. Dak., R. I. (not exceeding 60 days), S. Dak., Tex. (first 60 days, $2 thereafter), Wash., W. Va., Wyo.; $6—Fla., Ind., Mont.; $7—Colo.; $8—Cal., Nev. Salaries are paid as follows: *Per annum*—Conn., $300; Maine, $150; Mass., $750; N. J., $500; N. Y., $1,500; Ohio, $1,000 Penn., $1,500; Wis., $500. *Per regular session*—Ills., $1,000 ($5 per day for special); Iowa, $550; Miss., $400 ($5 per day for special). *Per term*—N. H., $200. All states pay mileage except Delaware and New Jersey, but the latter gives legislators free transportation on all railroads.

Limit of sessions.—There is no limit in Conn., Ills., Iowa, Maine, Mass., Miss., N. H., N. J., N. Y., Ohio, Penn., R. I. (but pay is limited to 60 days), Tex., (but only $2 per day is allowed after 60 days); Vt., Wis. Limits are imposed as follows: 40 days—Oregon, S. C., Wyo.; 45 days—W. Va.; 50 days—Ala., Ga., Ks., Nev.; 60 days—Cal., Del., Fla., Idaho, Ind., Ky., La., Mont., Neb., N. C., N. Dak., S. Dak., Utah., Va., Wash.; 70 days—Mo., 75 days —Tenn.; 90 days—Ark , Colo., Md., Minn. In Mississippi, special sessions limited to 30 days alternate with the regular sessions. Special sessions in Nevada are limited to 20 days.

Postage:

(20) SEC. 16. The legislature may provide by law for the payment of postage on all mailable matter received by its members and officers during the sessions of the legislature, but not on any sent or mailed by them.

The legislature of 1851 passed an act authorizing the Lansing postmaster "to charge to the state the postage on all matter received by members and officers of this legislature," and that is the only instance of the kind. The provision is practically obsolete on account of the requirement of prepayment of postage.

Compensation of president and speaker:

(21) SEC. 17. The president of the senate and the speaker of the house of representatives shall be entitled to the same per diem compensation and mileage as members of the legislature, and no more.

These officers are entitled to the same pay as members and no more. People v. Whittemore, 2/306.

Members ineligible to appointment; not to be interested in contracts:

(22) SEC. 18. No person elected a member of the legislature shall receive any civil appointment within this state, or to the senate of the United States, from the governor, the governor and senate, from the legislature, or any other state authority, during the term for which he is elected. All such appointments and all votes given for any person so elected for any such office or appointment shall be void. No member of the legislature shall be interested, directly or indirectly, in any contract with the state or any county thereof, authorized by any law passed during the time for which he is elected, nor for one year thereafter.

The term "appointment" seems to be used here as synonymous with "election." People v. Hurlbut, 24/44, 59. The purpose of such provisions is to prevent officers from using their official positions in the creation of offices for themselves, or for the appointment of themselves to place. Ellis v. Lennon, 86/468, 473.

Delegates to a constitutional convention come within the term "civil appointment," and members of the legislature which enacetd the law and provided for the offices of delegates, fixing compensation, etc., are ineligible as delegates. Fyfe v. Mosher, July 16, 1907.

Three readings; vote on final passage; yeas and nays:

(23) SEC. 19. Every bill and joint resolution shall be read three times in each house before the final passage thereof. No bill or joint resolution shall become a law without the concurrence of a majority of all the members elected to each house. On the final passage of all bills the vote shall be by ayes and nays and entered on the journal.

Joint resolution.—A joint resolution is a form of legislation used chiefly for administrative purposes of a local or temporary character. Olds v. State Land Commissioner, 134/442. This provision is a clear recognition of the custom prevailing under the old constitution of giving a resolution the force of a law when its effect is to authorize a single act. Id.

Three readings.—The first and second readings may be by title. Hart v. McElroy, 72/446. A substitute, germane to the original bill, need not be read three times, as if it were a new bill. Toll v. Jerome. 101/468, 471.

Majority.—The courts cannot question the right to vote of any member who constitutes part of that majority, and cannot declare an act void on the ground that members voting for it were not legally elected or seated. People v. Mahaney, 13/481; Auditor General v. Menominee Supervisors, 89/552. The lieutenant governor is not a member elect to the senate and cannot vote on the passage of a bill or joint resolution, or a "concurrent resolution" which effects legislation. Kelly v. Prescott, July 15, 1907.

Object of law and title; taking effect:

(24) SEC. 20. No law shall embrace more than one object, which shall be expressed in its title. No public act shall take effect or be in force until the expiration of ninety days from the end of the session at which the same is passed, unless the legislature shall otherwise direct, by a two-thirds vote of the members elected to each house.

Object and title.—Purpose of this provision was to arrest corruption and "log-rolling" in legislation, and the insertion, by dextrous management, of clauses in bills of which the titles gave no intimation, thus securing their passage through legislative bodies, whose members were not generally aware of their intention and effect. People v. Collins, 3/343; People v. Mahaney, 13/481; Kurtz v. People, 33/279; Thomas v. Collins, 58/64; Bissell v. Prob. Judge, 58/237; N. W. Mfg. Co. v. Judge, 58/381; Att'y Gen. v. Weimar, 59/580; Callaghan v. Chipman, 59/610; People v. Beadle, 60/22; Wardle v. Cummings, 86/395; Davies v. Supervisors, 89/295. Not designed to embarrass legislation by making laws unnecessarily restrictive in their scope and operation and thus multiplying their numbers; but it was intended that every proposed measure should stand upon its own merits. Att'y Gen. v. Weimar, 59/580. Not designed to require the body of a bill to be a mere repetition of the title. Neither intended to prevent including in the bill such means as are reasonably adapted to secure the object indicated by the bill. Kurtz v. People, 33/279; Burrows v. Delta Trans. Co., 106/600. The purpose of this provision is fully accomplished when the law has but one general object, which is fairly indicated by its title. People v. Mahaney, 13/481, 495; McCall v. Calhoun Circuit Judge, 146/322. And when the provisions of the statute are germane to the subject expressed in the title. Nat. Loan & Invest. Co. v. City of Detroit, 136/451. There is no duplicity of title and objects when a title, after stating the object of the act, does no more than add a notice of a repealing clause, when such a repeal would be effected by implication by the enactment of the law itself. Tolford v. Church, 66/431, 440.

How construed.—It ought to be construed reasonably and not in so narrow and technical a sense as unnecessarily to embarrass legislation. Ryerson v. Utley, 16/269. The requirement should be honestly carried out. Bissell v. Prob. Judge, 58/237. The courts should be neither so hypercritical as to require every matter of detail to be stated in the title, nor so liberal as to render the constitutional provision nugatory; but regard should be had to the letter and spirit of the constitution, the evils intended to be prevented and the rights to be preserved. Hauck's Case, 70/396. This provision applied only to future legislation and not to acts passed before its adoption; nor does it refer to chapter headings in the compiled laws. Stewart v. Riopelle, 48/177; Rogers v. Windoes, 48/628; Aud. Gen. v. L. G. & M. R. Co. 82/426.

Act broader than title.—When the act is broader than the title, if, after striking out all not indicated by the title, what is left is complete in itself, sensible, capable of execution and wholly independent of what was rejected, the act must be sustained as constitutional. Callaghan v. Chipman, 59/610, 614.

Title broader than act.—It is not understood that the body of the act must contain all the provisions it might contain under the title to save the act from being unconstitutional. Boyer v. Fire Ins. Co., 124/455, 461.

Comprehensive object.—The object may be very comprehensive and still be without objection. People v. State Ins. Co., 19/392, 398. It may be true of any comprehensive statute that it might be subdivided and several laws in pari materia enacted in place of one; but it does not follow that an act which has but one general object is in conflict with the constitutional provision. Bissell v. Heath, 98/472, 476.

Amendatory acts.—An amendatory act which introduces matter outside of the purpose indicated by the title of the original act and inconsistent with provisions remaining unrepealed is void as within this express prohibition. Stewart v. Father Matthew Society, 41/67, 72; Church v. Detroit, 64/571; Eaton v. Walker, 76/579, 585; Fish v. Stockdale, 111/46. But new matter may be incorporated which is fairly within the scope of, or germane to, the general object of the original act and appropriate to be made in order to effectuate the general object. Underwood v. McDuffie, 15/361, 367; Att'y Gen. v. Amos, 60/372, 377; People v. Howard, 73/10, 14; Holden v. Supervisors, 77/205; Wardle v. Cummings, 86/395, 401; Detroit v. Judge, 112/319; Attorney General v. Bolger, 128/355. A provision which could have been inserted without repugnance in the original act cannot be a variance when introduced as an amendment. Chippewa Supervisors v. Aud. Gen., 65/408, 412; Gravel Road Co. v. Paas, 95/372, 379. In applying the constitutional test, the original act must be regarded as if the new matter had been embraced within it when passed; if such matter is embraced within the original title, the amendatory act is valid; otherwise not. People v. Gadway, 61/285, 290. A general statute of local application cannot be extended in its operation to the whole state by an act having a title merely indicating a purpose to amend the local statute. People v. DeBlaay, 137/402.

Title.—The title of an act is as much a part of the act as the body is, and the two houses must agree upon the same title. Fillmore v. VanHorn, 129/52. It is significant and usually controlling in determining the scope of the act; the body of the act must reasonably harmonize with it. McKellar v. Detroit, 57/158; N. W. Mfg. Co. v. Judge, 58/381; Booth v. Eddy, 38/245; Bates v. Nelson, 49/459. It must be a truthful index to legislation. Wardle v. Cummings, 86/395, 401. This provision is but an extension of the rule of construction that the application of particular provisions is not to be extended beyond the general scope of a statute, unless such extension is manifestly designed. Estate of Ticknor, 13/44,52. The purpose of it is that legislators, and as well parties interested, may understand from the title that only provisions germane to the object therein expressed will be enacted. Blades v. Water Com'rs of Detroit, 122/366, 378. But the operation of an act is not confined to what the title actually expresses. People v. Wands, 23/385, 388. Nothing more than the general object need be stated in the title and every provision which is fairly calculated to carry that object into effect must be held to come within it. People v. Hurlbut, 24/44; Callaghan v. Chipman, 59/610; Hall v. Burlingame, 88/438; Grand Rapids v. Judge, 93/469; Van Husan v. Heames, 96/504; Tillotson v. Judge, 97/585; McMorran v. Ladies of the Maccabees, 117/398. The legislature is not required to express in the title every end and means necessary and convenient for the accomplishment of the general object. People v. State Insurance Co., 19/392, 398. Nor the precise manner in which it intends to effect the object. Grinkey v. Wayne Probate Judge, 137/49, 53. The generality of the title is no objection to it, so long as it is not made a cover to legislation incongruous in itself, and which, by no fair intendment, can be considered as having a necessary or proper connection. People v. Mahaney, 13/481; People v. State Insurance Co., 19/392, 398; Soukup v. Van Dyke, 109/679, 681; People v. Worden Grocer Co., 118/604, 607. The legislature cannot use one title and explain in the body of the bill that it means something else. N. W. Mfg. Co. v. Judge, 58/381, 383. But words may be used in their broader, and not necessarily in their narrower sense, in titles to acts. People v. Bradley, 36/447, 452. But amendments highly penal preclude a liberal construction of the title so that it will extend to objects not within

the meaning of the language employed. People v. Gadway, 61/285. The title of an amendatory act need not be more specific than that of the act amended, if there is nothing in the later act that might not have been incorporated in the earlier one under its existing title. Common Council of Detroit v. Schmid, 128/379. A title, in substance and effect declaring a purpose to amend the charter of a specified city, stating the section of the old charter amended and the sections added and setting forth the general purpose of the amendatory act is sufficient. Attorney General v. Loomis, 141/547. A title alone cannot repeal a prior act. Brooks v. Hydorn, 76/273, 281. It is not necessary to include in the title to a penal statute a statement that it is the purpose of the act to punish violations thereof. Hart. Ins. Co. v. Raymond, 70/485; People v. Miller, 88/383.

Title of bill.—The title of a bill is no part of the bill itself and can have no enacting power of its own. Brooks v. Hydorn, 76/273, 280. But the title may be looked at to determine the purpose or object of the bill. Sackrider v. Supervisors, 79/59, 68; Attorney General v. P. R. Co., 97/589, 592 If the object of the act as passed is fully expressed in its title, the form or status of such title at its introduction or during any of the stages of legislation, before it became a law, is immaterial. The title is not an essential part of a bill, although it is of a law. Attorney General v. Rice, 64/385, 388; Hart v. McElroy, 72/446, 452; Common Council of Detroit v. Schmid, 128/379.

Taking effect.—Purpose of this provision is to give the people time and opportunity to learn what changes are made in the law before they go into operation. Price v. Hopkin, 13/318, 325. An act must be understood as beginning to speak at the moment when it takes effect, and not before. Cargill v. Power, 1/369; Rice v. Ruddiman, 10/125, 135; Carleton v. People, 10/250, 258; Price v. Hopkin, 13/318, 325; Fosdick v. Van Husan, 21/567, 574; Mut. Ben. Ass'n v. Rolfe, 76/146, 152. When a bill passes one house, with an order to take immediate effect, and is then amended by the other house and given immediate effect, it is not necessary for the first house, after concurrence in the amendments, to give it immediate effect anew. People v. Burch, 84/408, 413. The immediate effect clause in an act is no part of the bill itself, but is added by the enrolling clerk, so that the addition of it by mistake does not invalidate the act. Stow v. Grand Rapids, 79/595.

Extra compensation prohibited:

(25) SEC. 21. The legislature shall not grant nor authorize extra compensation to any public officer, agent or contractor, after the service has been rendered or the contract entered into.

No municipality can, by taxation, raise a sum of money to be paid as extra compensation to a contractor after the stipulated services have been rendered or his contract entered into, even though authorized to do so by a special act of the legislature and by vote of a majority of the electors of the municipality. Anderson v. Hill, 54/477. A joint resolution permitting a contractor to select any swamp lands in the lower peninsula, as compensation for a road built under an act entitling him to receive state swamp lands in Ottawa county, then valued at $1.25 an acre but afterwards valued at $8 an acre and all disposed of before the completion of the road, was not void under this section. Olds v. State Land Com'r, 134/442.

Contracts for fuel, stationery, printing and binding:

(26) SEC. 22. The legislature shall provide by law that the furnishing of fuel and stationery for the use of the state, the printing and binding the laws and journals, all blanks, paper and printing for the executive departments and all other printing ordered by the legislature, shall be let by contract to the lowest bidder or bidders, who shall give adequate and satisfactory security for the performance thereof. The legislature shall prescribe by law the manner in which the state printing shall be executed, and the accounts rendered therefor; and shall prohibit all charges for constructive labor. They shall not rescind nor alter such contract, nor release the person or persons taking the same, or his or their sureties, from the performance of any of the conditions of the contract. No member of the legislature nor officer of the state shall be interested directly or indirectly in any such contract.

State printing and the letting of contracts therefor discussed in Ayres v. State Anditors, 42/422; Free Press Co. v. State Auditors, 47/135; Common Council v. Rush, 82/532, 546. The board of state auditors cannot impose as a condition of bidding that the work shall be done at the capital. It must be thrown open to all bidders. Ayres v. State Auditors, 42/422, 435.

Sale or conveyance of private real estate; vacation or alteration of highways or streets:

(27) SEC. 23. The legislature shall not authorize, by private or special law, the sale or conveyance of any real estate belonging to any person; nor vacate nor alter any road laid out by commissioners of highways or any street in any city or village, or in any recorded town plat.

This section put an end to proceedings that were common under the old constitution and in territorial times.

A special act authorizing a plank road company incorporated under a special charter to mortgage its road is regarded as an amendment of the charter and not in conflict with this constitutional provision. Joy v. J. & M. P. R. Co., 11/155, 170.

The prohibition as to the alteration of roads is equivalent to an express affirmation of the power of the legislature to vacate or alter a state road laid out by itself. People v. Ingham Supervisors, 20/95, 103; Davies v. Saginaw Supervisors, 89/295, 301. But state roads are such only as have been laid out by state authority. Highways cannot be converted into state roads by legislative declaration and then discontinued at the will of that body. Davies v. Saginaw Supervisors, 89/295, 301. This pro-

vision and the prohibition as to the state's engaging in works of internal improvement (art. xiv, sec. 9) do not take from the legislature and confer upon local authorities the supreme power over the public streets. Street Ry. Co. v. City of Detroit, 110/384. But by those sections control over highways and streets has been given to townships, cities and villages for all purposes germane to their use. Attorney General v. Pingree, 120/550.

Chaplain of prison; religious services in legislature:

(28) SEC. 24. The legislature may authorize the employment of a chaplain for the state prison; but no money shall be appropriated for the payment of any religious services in either house of the legislature.

Amendment of laws:

(29) SEC. 25. No law shall be revised, altered or amended by reference to its title only; but the act revised and the section or sections of the act altered or amended shall be re-enacted and published at length.

Reference to title only.—An act which incorporates within itself, by mere reference, another act, but with several changes and modifications not made by the reenactment of the sections changed or modified, but only indicated, is void under this provision. Mok v. Detroit B. & S. Assn., 30/511, 522.

Section numbers.—The position of a section in the original statute, or in the compiled laws, is not changed by amendment, and there is no reason why subsequent amendments of the same section should not be made by reference to the original number. Jones v. Comr. of State Land Office, 21,/236, 242. The practice of amending by reference to sections instead of by reference to subjects or to the entire statute in no way carries out the real design of the constitution. Comstock v. Judge, 39/195, 197; Callaghan v. Chipman, 59/610, 616.

Published at length.—The mischief designed to be remedied by this provision was the enactment of amendatory statutes—by the insertion of certain words or the substitution of one phrase for another in an act or section referred to but not published—in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the laws. People v. Mahaney, 13/481; E. Saginaw Mfg. Co. v. E. Saginaw, 19/259; Mok v. Detroit B. & S. Assn., 30/511; Gordon v. People, 44/485; Att'y Gen. v. Parsell, 100/170. It does not require that the section amended shall be published at length, but only the section as amended, with such reference to the old law as will show for what the new law is substituted. Jones v. Commissioner of Land Office, 21/236, 241; Att'y Gen. v. Parsell, 100/170, 173, 175. Nor does it require the publication at length of the other sections of the amended act, which are not amended. People v. Shuler, 136/161. Nor does it prevent the reenactment of an unconstitutional act, after the elimination of its unconstitutional features. People v. DeBlaay, 137/402. This section was not intended to make any different rule as to the effect of such amendments. So far as the section is changed it must receive a new operation, but so far as it is not changed it does not have the effect of disturbing the whole body of statutes in pari materia, unless that intent clearly appears. Gordon v. People, 44/485, 487.

Subdivisions of sections.—The question of whether the setting forth of a mere subdivision of a section, in the amendatory act, would be a sufficient compliance with the constitution has never been raised in Michigan; but in Indiana, under a constitutional provision almost identical with ours—"No act shall ever be revised or amended by mere reference to its title; but the act revised or section amended shall be set forth and published at full length"—it was held that the entire section must be published at length, however long it may be or into however many clauses it may be divided. Town of Martinsville v. Frieze, 33 Ind. 507. In Nebraska, however, under a constitutional provision much less positive—"No law shall be amended unless the new act contains the section or sections so amended"—the supreme court said: "This court has more than once held that the word 'section' refers to a subdivision of a legislative enactment and that a law to amend a certain subdivision of a section which contains the subdivision so amended is not inimical to said clause of the constitution." State v. City of Kearney, 49 Neb., 325, citing State v. Babcock, 23 Neb. 128; Fenton v. Yule, 27 Neb. 758; Baird v. Todd, 27 Neb. 782; State v. Partridge, 29 Neb. 158; State v. Bemis, 45 Neb. 724. The Indiana case would seem to be the safer one to follow in Michigan.

Amendment by implication.—Acts which amend others only by implication are not within the requirement of this section. People v. Mahaney, 13/481; Underwood v. McDuffee, 15/361; People v. Wands, 23/385; Swartwout v. M. A. L. R. R. Co. 24/389; Mok v. Detroit B. & S. Assn., 30/511; Ripley v. Evans, 87/217; People v. Shuler, 136/161; Attorney General v. Loomis, 141/547. Nor is an act which modifies or amends certain provisions of a general law only so far as it affects a particular county and then supplements it with some additional requirements relating to such county. Rice v. Probate Judge, 141/692. Nor is an act which might properly have been passed as an amendment to a prior act, but which does not of necessity change it and whose provisions are not in conflict with it. Rice v. Hosking, 105/306. Nor an act which modifies a section of another act only so far as repugnant and leaves the remainder of the section in force. McCall v. Calhoun Circuit Judge, 146/323; Connors v. Iron Co., 54/171; Musselman v. Wright, 107/639.

Divorces prohibited:

(30) SEC. 30. Divorces shall not be granted by the legislature.

A special act authorizing a divorce for some particular cause not provided for by the general law, is contrary to this provision. Teft v. Teft, 3/67.

Lotteries prohibited:

(31) SEC. 27. The legislature shall not authorize any lottery nor permit the sale of lottery tickets.

There can be no doubt what was meant by this language, and it clearly referred to the class of enterprises which had formerly been lawful if authorized by law and criminal if unauthorized. People v. Reilly, 50/384, 387.

Fifty day limit:

(32) SEC. 28. Repealed.

This section, repealed in 1903–04, provided that "no new bill shall be introduced into either house of the legislature after the first fifty days of the session shall have expired." As at first adopted it provided that "no new bill shall be introduced into either house during the last three days of the session, without the unanimous consent of the house in which it originated." In 1859–60 the fifty-day limit was adopted.

As a means of shortening the session, the limit was a failure, but as a nuisance to all three departments of the state government it was a success. The legislature often evaded it, the governor overlooked it and the supreme court sustained the irregular legislation so far as it conscientiously could. The numerous cases originating under this section and the decisions therein are no longer a part of our constitutional law.

Contested elections:

(33) SEC. 29. In case of a contested election, the person only shall receive from the state per diem compensation and mileage who is declared to be entitled to a seat by the house in which the contest takes place.

Defaulters ineligible:

(34) SEC. 30. No collector, holder nor disburser of public moneys shall have a seat in the legislature, nor be eligible to any office of trust or profit under this state, until he shall have accounted for and paid over, as provided by law, all sums for which he may be liable.

Private claims or accounts:

(35) SEC. 31. The legislature shall not audit nor allow any private claim or account.

It is not a legitimate exercise of legislative power to determine what debts a municipality shall pay and to compel their payment. Fitch v. Board of Auditors of Claims against Manitou County, 133/178, 186; People v. Supervisor of Onondaga, 16/254. A joint resolution providing for the payment of an admitted obligation of the state, by appropriation of state swamp lands, does not conflict with this section. Olds v. State Land Com'r, 134/442. But an act providing for a tax to reimburse a township treasurer for money stolen from him does conflict. Bristol v. Johnson, 34/123.

Final adjournment:

(36) SEC. 32. The legislature, on the day of final adjournment, shall adjourn at twelve o'clock at noon.

This is doubtless intended to prevent the continuance of the last day's sitting for an indefinite time.

Time and place of meeting; final adjournment:

(37) SEC. 33. The legislature shall meet at the seat of government on the first Wednesday in January, in the year one thousand eight hundred and sixty-one, and on the first Wednesday of January in every second year thereafter, and at no other place or time unless as provided in the constitution of the state, and shall adjourn without day at such time as the legislature shall fix by concurrent resolution.

Amendment of 1859–60. The amendment dropped the obsolete provision for the first meeting of the legislature in 1851 and added at the end the provision as to adjournment.

Annual sessions were held under the constitution of 1835.

Sessions in other states.—Annual: Ga., Mass., N. J., N. Y., R. I., S. C., Quadrennial: Ala., Miss. (with alternating special sessions limited to 30 days). All the other states have biennial sessions.

Election of members:

(38) SEC. 34. The election of senators and representatives, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, in the year one thousand eight hundred and fifty-two, and on the Tuesday succeeding the first Monday of November of every second year thereafter.

Senatorial terms in other states.—Four years in Ala., Cal., Colo., Del., Fla., Ills., Ind., Iowa, Ks., Ky., La., Ind., Minn., Miss., Mo., Mont., Nev., N. Dak., Ore., Penn., S. C., Tex., Utah, Va., Wash., W. Va., Wis., Wyo., Three years in N. J. Two years in Ark., Conn., Ga., Idaho, Maine, Neb., N. H., N. Y., N. C., Ohio, S. D., Tenn., Vt. One year in Mass., R. I.

Representative terms.—Four years in Ala., La., Miss. One year in Mass., N. J., N. Y., R. I., Wash. Two years in all the other states.

State paper prohibited:

(39) SEC. 35. The legislature shall not establish a state paper.

Amendment of 1901–02. The amendment struck out the clause: "Every newspaper in the state which shall publish all the general laws of any session within forty days of their passage shall be entitled to receive a sum not exceeding fifteen dollars therefor."

Publication of laws and judicial decisions:

(40) SEC. 36. The legislature shall provide for the speedy publication of all statute laws of a public nature, and of such judicial decisions as it may deem expedient. All laws and judicial decisions shall be free for publication by any person.

History of the mode of publishing the state reports. Ayres v. State Auditors, 42/422. "An act to require the judges of the supreme court to prepare and file a syllabus to each and every opinion by them delivered," approved Mar. 31, 1881, held void. In the Matter of Head Notes, 43/641.

Vacancies in office:

(41) SEC. 37. The legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the vacancy, where no provision is made for that purpose in this constitution.

The statute providing for the drawing of lots in case two or more persons have received an equal number of votes for the same office cannot be considered as a regulation for declaring and filling vacancies under this provision. Keeler v. Robertson, 27/116, 120. Upon the creation of a new office a vacancy exists, whether the legislature so declares or not, and the legislature may provide for filling it. People v. Burch, 84/408, 415. This section refers only to the mode of filling the vacancy and not to the term of the appointee. Att'y Gen. v. Trombly, 89/50, 57; Peopie v. Burch, 84/408, 416. An appointee to fill vacancy has the same official standing as the officer he succeeds. Peck v. Berrien Supervisors, 102/346, 349.

Local legislative and administrative powers:

(42) SEC. 38. The legislature may confer upon organized townships, incorporated cities and villages, and upon the board of supervisors of the several counties, such powers of a local, legislative and administrative character as they may deem proper.

Local self-government.—The object of this provision of the constitution is to secure to local municipalities the power of self government in matters of purely local concern. The nature and extent to which the legislature may confer this legislative power upon municipalities within their territorial limit is entirely within the discretion of the legislature. People v. Hanrahan, 75/611, 616. The constitution cannot be understood or carried out at all, except on the theory of local self government; and the intention to preserve it is quite apparent. People v. Hurlbut, 24/44, 89. For a development of the principles of local self government and the powers of municipalities under the constitution of Michigan, see see People v. Hurlbut, 24/84; Att'y Gen. v. Lothrop, 24/234; Hubbard v. Twp. Board, 25/153; Park Comrs. v. Detroit, 28/227; Att'y Gen. v. Detroit Com. Council, 29/108; Park Comrs. v. Mayor, 29/343; Shumway v. Bennett, 29/451; Youngblood v. Sexton, 32/406; Allor v. Wayne Co. Auditors, 43/76; Torrent v. Muskegon, 47/115; Matter of Frazee, 63/396; Met. Pol. Board v. Auditors, 68/576; People v. Hanrahan, 75/611; Port Huron v. Jenkinson, 77/414; Park Comrs. v. Council, 80/663; Speed v. Council, 97/198; 98/360; 100/94. It is incompetent to withdraw from the local authorities provided for by the constitution the functions of their offices and confer them upon a board appointed by power removed from, and not responsible to, local authority. Street Railway Co. v. City of Detroit, 110/384, 391; Davies v. Board of Supervisors, 89/295; Hubbard v, Twp. Board of Springwells, 25/153. But the right of local self-government is none the less effectively preserved because certain powers are vested in the common council rather than in the mayor. Attorney General v. Bolger, 128/355. And a charter provision empowering the board of estimates of a city to disallow items included in the annual budget as approved by the common council is not void as a delegation of power which can be conferred upon the common council alone. Robinson v. City of Detroit, 107/168.

Municipalities.—The constitution provides for five local municipalities—counties, cities, villages, townships and school districts, which mean such bodies of those names as were of a nature familiar and understood. Metropolitan Police v. Board of Auditors, 68/576. Their fundamental and necessary characteristics cannot be changed by legislation from what they were fixed by usage and recognition when the constitution was adopted. Attorney General v. Detroit Common Council, 58/213. The common council of a city is a distinctive and inseparable feature in municipal government under our existing institutions and cannot be done away with nor stripped of its legislative powers. Att'y Gen. v. Detroit Com. Council, 29/108, 112. But see People v. Hurlbut 24/44, 69. Municipal corporations are subject to general legislative control. Smith v. Adrian, 1/495, 498; People v. Mahaney, 13/481, 500; Detroit v. Blackeby, 21/84, 117; Park Comrs. v. Detroit, 28/228; Att'y Gen. v. Detroit Com. Council, 29/108, 111; Shumway v. Bennett, 29/451, 460; Youngblood v. Sexton, 32/406, 414; Torrent v. Muskegon, 43/115. They are mere instrumentalities of the state for the more convenient administration of local government. Their powers are such as the legislature may confer, and these may be enlarged, abridged or entirely withdrawn at its pleasure. Attorney General v. Twp. Board of Springwells, 143/523. A municipality has no power, except as derived from the legislature, to grant to a street railway company an easement in its streets. Street Railway Co. v. City of Detroit, 110/384. Municipal charters are not contracts or grants of privileges which are beyond legislative control; they are created for public uses and are subject to public control. Detroit v. Blackeby, 21/84, 115, 117. Cities and kindred municipalities are the oldest of all existing forms of government and every city charter must be rationally construed as intended to create a corporation which shall resemble in its essential character the class into which it is introduced. Torrent v. Muskegon, 43/115, 118. For a history of the incorporation of cities and villages by general statutes, see Shumway v. Bennett, 29/451, 457.

County government.—For a history of the county system in Michigan, see Att'y Gen. v. Wayne Audit-

ors, 73/53. The board of supervisors has such powers only as the legislature may confer upon it, except that it may organize a township under such restrictions and regulations as the legislature shall prescribe; and when such power has been conferred it may be suspended or entirely revoked in any particular instance at any time the legislature may see fit. Att'y Gen. v. Marr, 55/445, 449, 450.; Feek v. Twp. Board, 82/393, 408. See People v. Ingham Supervisors, 20/95, 103; Friesner v. Com. Council, 91/504, 508; Supervisors v. Blacker, 92/638, 644. The legislative power delegated to boards of supervisors under act 207 of 1889 ("local option law") is authorized by the constitution. Feek v. Township Board, 82/393, 407. The legislature may delegate to the board of supervisors of a county power to fix and determine conditions in contracts for the construction or improvement of drains additional to those prescribed by the general statute. Albert v. Gibson, 141/698.

Delegation of powers.—This provision means that the legislature shall, in its discretion, determine what legislative and administrative powers a municipality shall have. Elliott v. City of Detroit, 121/611. It has always been considered as authorizing the legislature to impose on municipalities and their officers the responsibility for the performance of state duties of one character or another, and has never been supposed to mean only that it might confer privileges in which the state would have no interest. Under it they have imposed duties pertaining to the public health and good order, and various other subjects of general concern. Attorney General v. Detroit Common Council, 112/145, 159. The legislature has power to confer upon townships, cities, villages and boards of education local legislative and administrative powers such as are suited to their condition; but there is no other power in the constitution for conferring similar public governing authority elsewhere, and these bodies are all created by popular elections. Metropolitan Police v. Board of Auditors, 68/576. Local legislative power may be delegated as authorized and contemplated by the constitition; and administrative powers, involving in some cases the exercise of discretion which the legislature itself might have exercised, may be delegated. People v. Collins, 3/343, 414, 415. And political and discretionary action, within the province of the legislature may be delegated to local authorities. Shumway v. Bennett, 29/451,460. No provision of the constitution operates to prevent the legislature from conferring on the common council of a city the power to appoint administrative officers, and such has long been the practice. Attorney General v. Bolger, 128/355. But the legislature cannot delegate to a city the power to increase or diminish its representation upon the board of supervisors. Bolt v. Riordan, 73/508, 519.

Religious liberty:

(43) SEC. 39. The legislature shall pass no law to prevent any person from worshiping Almighty God according to the dictates of his own conscience, or to compel any person to attend, erect, or support any place of religious worship, or to pay tithes, taxes, or other rates for the support of any minister of the gospel or teacher of religion.

Religious liberty does not include the right to introduce and carry out every scheme or purpose which persons see fit to claim as part of their religious system; no one can lawfully stretch his own liberty of action so as to interfere with that of his neighbors or violate peace and good order. Matter of Frazee, 63/396, 405. The use in the schools for fifteen minutes at the close of each day's session, as a supplemental text-book on reading, of a book entitled "Readings from the Bible," which is largely made up of extracts from the Bible emphasizing the moral precepts of the Ten Commandments, where the teacher is forbidden to make any comment upon the matter therein contained, and is required to excuse from that part of the session any pupil upon application of his parent or guardian, is not a violation of the constitution. Pfeiffer v. Board of Education of Detroit, 118/560.

Sectarian appropriations prohibited:

(44) SEC. 40. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary, nor shall property belonging to the state be appropriated for any such purposes.

But the extent and the manner of the encouragement to be conferred upon religious associations, by exempting their property from taxation or otherwise, is confided by the organic law, subject to certain restrictions, to the wisdom and discretion of the legislature and not to the judicial tribunals. Lefevre v. Mayor, &c., of Detroit, 2/586, 592.

Civil, political and religious equality:

(45) SEC. 41. The legislature shall not diminish or enlarge the civil or political rights, privileges and capacities of any person on account of his opinion or belief concerning matters of religion.

Liberty of speech and the press:

(46) SEC. 42. No law shall ever be passed to restrain or abridge the liberty of speech or of the press; but every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of such right.

Attainder; ex post facto laws; impairment of contracts:

(47) SEC. 43. The legislature shall pass no bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.

Ex post facto laws.—This provision refers only to criminal cases or offenses. Scott v. Smart's Exr's, 1/295, 302. Act 118 of 1893, sec. 33, the effect of which is to deprive convicts in part of the right to earn a reduction of sentence by good behavior, by impliedly providing for a less favorable schedule of

credits than that in force when they were sentenced, is to that extent *ex post facto*, as its effect is to increase and not to mitigate the punishment of such convicts. Matter of Canfield, 98/644.

Chase's classification.—Justice Chase's classification of *ex post facto* laws has been generally accepted. It is as follows:

1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action;

2d. Every law that aggravates a crime, or makes it greater than it was when committed;

3d. Every law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime when committed;

4th. Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender.

All these and similar laws are manifestly unjust and oppressive. In my opinion the true distinction is between *ex post facto* laws and retrospective laws. Every *ex post facto* law must necessarily be retrospective, but every retrospective law is not an *ex post facto* law; the former only are prohibited. Every law that takes away or impairs rights vested, agreeably to existing laws is retrospective and is generally unjust and may be oppressive; and there is a good general rule, that a law should have no retrospect; but there are cases in which laws may justly, and for the benefit of the community, and also of individuals, relate to a time antecedent to their commencement; as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law *ex post facto*, within the prohibition, that mollifies the rigor of the criminal law; but only those that create or aggravate the crime, or increase the punishment, or change the rules of evidence for the purpose of conviction. Every law that is to have an operation before the making thereof, as to commence at an antecedent time, or to save time from the statute of limitations, or to excuse acts which were unlawful, and before committed, and the like, is retrospective. But such acts may be proper and necessary as the case may be. There is a great and apparent difference between making an unlawful act lawful and the making an innocent act criminal and punishing it as a crime. Calder v. Bull, 3 Dallas, 386, 390.

Retrospective acts.—There is nothing in the nature of retrospective laws which places them beyond the jurisdiction of the legislature. Cushing's Law and Prac. of Leg. Assemblies, §771; Cooley, Const. Lim. 370. If a power conferred by a valid exercise of legislative authority be defectively or irregularly exercised and for that reason invalid, the legislature may, by subsequent action cure any such defect or irregularity, the requirement of which was originally within its discretion, and if its power over the subject was plenary, its power of confirmation will be absolute. People v. Ingham Co. Supervisors, 20/95. But this power of the legislature does not extend to matters of jurisdiction. The proposition that the legislature can make good that which was void when done is utterly at variance with the fundamental principles of law. Hall v. Perry, 72/202. Retrospective laws are generally unjust and, as has been forcibly said, neither accord with sound legislation nor the fundamental principles of the social compact. Still they are with certain exceptions left open to the states according to their own constitution and government, and become obligatory if not prohibited by the letter. Scott v. Smart's Ex'rs, 1/295, 303.

Contract relations.—A judgment is not a contract within this inhibition of the constitution, for the rule has relation to the voluntary contracts of the parties and not to obligations forced upon either party. Crane v. Hardy, 1/56, 63. An act exempting from taxation and offering a bounty to encourage manufactures is merely a bounty law and not a contract; it may be repealed at any time, but such repeal will not cut off bounties already earned. E. Saginaw Mfg. Co. v. E. Saginaw, 19/259. Legislators cannot bind the hands of their successors where the elements of contract, concession and consideration do not appear; and the doctrine that they may do so by contract is one so exceptionable and so liable to abuses that courts will not be astute in discovering the existence of a contract between the state and those who claim franchises under it, where the essential elements of a contract are not manifest. Detroit v. D. & H. P. R. Co., 43/140, 145. The remedy is no part of the contract, and acts merely modifying the remedy, without taking it away altogether, do not impair the obligation. Joy v. Thompson, 1 Doug. 373, 378; Bronson v. Newberry, 2 Doug. 38, 46; Rockwell v Hubbell's Admrs., 2 Doug. 197, 201; Crippen v. Morrison, 13/23; Bourgette v. Williams, 73/208, 215.

Impairment of obligation.—The obligation consists in the binding force of the contract on the party who makes it. This depends upon the laws in existence when it is made. Crane v. Hardy, 1/56, 62. The objection to a law on the ground of impairment of a contract can never depend upon the extent of the change which the law effects in it. Any deviation from its terms, by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with the performance of those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligation. Mundy v. Monroe, 1/68, 74. Act 388 of 1889, under which the Detroit boulevard was opened and is maintained, contains no agreement or obligation on the part of the city to construct sidewalks at its expense, so that act 415 of 1893, imposing such expense upon land-owners, does not violate any contractual obligation. Turner v. City of Detroit, 104/326. Act 149 of 1889, authorizing the commencement of suit by attachment before the maturity of the debt, is not in conflict with this provision. Mosher v. Bay Circuit Judge, 108/503. The repeal of an act exempting from taxation for county road systems such townships as establish a township system is not an impairment, as a municipality is but a government agency. Saginaw Co. Supervisors v. Hubinger, 137/72. A drain commissioner has no such contractual relations or vested rights under the law that his duties may not at any time be suspended, restricted or enlarged: nor have parties interested in the construction of drains such rights. Rice v. Ionia Probate Judge, 141/692. An amendatory act reducing a bounty offered cannot deprive a party of bounties already earned under the original act, he having a vested right therein. People v. State Auditors, 9/327.

Valid acts.—It has been held that there is no impairment in the following cases: Requiring a written, instead of a verbal promise to revive a contract barred by the statute of limitations. Joy v. Thompson, 1 Doug. 373, 378. Abolishing imprisonment for debt. Bronson v. Newberry, 2 Doug. 38, 46. Exempting from execution property not previously exempted. Rockwell v. Hubbell's Admrs., 2 Doug. 197, 201. Breitung v. Lindauer, 37/217, 229. An act passed under the police power of the state prohibiting any trade or employment injurious to the public, although it may affect the performance of prior contracts, for such a law does not operate directly upon the contract. People v. Hawley, 3/330, 342.

Invalid or inapplicable acts.—The following acts have been held invalid or inapplicable to contracts previously made: The repeal of the charter of a banking corporation containing no reservation of a power to repeal. Mich. State Bank v. Hastings, et al., 1 Doug. 225, 235. Requiring property to be sold for a higher price upon execution, than was required when the contract was made. Willard v. Longstreet, 2 Doug. 172. Inhibiting actions of ejectment by mortgagees before foreclosure. Mundy v. Monroe, 1/68, 76; Blackwood v. Van Vleet, 11/252, 255; Crippen v. Morrison, 13/23, 36; Newton v. McKay, 30/380, 381. Shortening the time for redemption under mortgages. Cargill v. Power, 1/369. An amendment to a plank road company's charter importing new and additional terms not assented to by the company. (Christiancy and Campbell, Justices), People v. J. & M. P. R. Co.,

9/285. Requiring the justices of the supreme court to file head notes with their opinions, since such notes are the only feature of the reports worth copyrighting and belong to the publishers under contract. Head Notes, 43/641. Establishing a lien for labor upon shingles. Bourgette v. Williams et al., 73/208, 215.

Writ of habeas corpus:

(48) SEC. 44. The privilege of the writ of *habeas corpus* remains and shall not be suspended by the legislature, except in case of rebellion or invasion the public safety require it.

Appropriation of money or property for local or private purposes:

(49) SEC. 45. The assent of two-thirds of the members elected to each house of the legislature shall be requisite to every bill appropriating the public money or property for local or private purposes.

The construction of a state road is not a local or private purpose within the meaning of this section, and the appropriation of swamp lands for such purpose does not require a two-thirds vote. McRae v. Shaffer, 89/463. A joint resolution authorizing the board of state auditors to investigate and adjust the claim for compensation by a citizen alleged to have been sentenced to prison for a crime of which he was innocent, must be passed by a two-thirds vote. Allen v. Board of State Auditors, 122/324.

Jury of less than twelve:

(50) SEC. 46. The legislature may authorize a trial by a jury of a less number than twelve men.

Act 142 of 1861, authorizing the court to proceed with the trial of a case before fewer jurors than were originally empaneled to try the same, conflicts with this provision, since it is an attempt to delegate to the courts a power belonging to the legislature alone. McRae v. Railroad Co., 93/399, 406.

Indeterminate sentences:

(51) SEC. 47. The legislature may, by law, provide for the indeterminate sentences so called, as a punishment for crime, on conviction thereof, and for the detention and release of persons imprisoned or detained on said sentences.

Amendment of 1901–02. The section originally adopted was: "The legislature shall not pass any act authorizing the grant of license for the sale of ardent spirits or other intoxicating liquors." This was abrogated in 1875–6.

The amendment of 1901–02, inserting the above section, authorized the enactment of act 136, §1, of 1903, providing for sentences fixing no maximum term of imprisonment. In re Campbell, 138/597; In re Manaca, 146/697.

Enacting clause:

(52) SEC. 48. The style of the laws shall be, "The People of the State of Michigan enact."

This enacting clause is requisite to a valid law. People v. Dettenthaler, 118/595. But a statute is not invalidated because the bill as originally introduced had no enacting clause. Powell v. Jackson Council, 51/129.

County and township highways and bridges:

(53) SEC. 49. The legislature may provide for the laying out, construction, improvement and maintenance of highways, bridges and culverts by counties and townships, and may authorize counties to take charge and control of any highways within their limits for such purposes; and may modify, change or abolish the powers and duties of township commissioners and overseers of highways. But the tax raised in any one year shall not exceed two dollars upon each one thousand dollars valuation, according to the assessment roll of the county for the preceding year. The legislature may also prescribe the powers and duties of boards of supervisors in relation to highways, bridges and culverts, and may provide for one or more county road commissioners, to be elected by the people, or appointed, with such powers and duties as may be prescribed by law. No county shall incur any indebtedness for any purposes in excess of three per cent of the valuation, according to the last assessment roll, and no such indebtedness beyond one-half of one per cent of such valuation shall be incurred, unless authorized by a majority of the electors of said county voting thereon: *Provided*, That any county road system provided by law shall not go into operation in any county until the electors of said county,

by a majority vote, have declared in favor of adopting the county road system.

Amendment of 1899. This section was first added to this article in 1893.
A majority of all the votes cast at the election is sufficient for the adoption of the county road system. Shearer v. Bay County Supervisors, 128/552. The legislature may modify, change or abolish the powers and duties of the township highway commissioner. Campau v. Highway Comr., 132/365; Grosse Pointe Twp. v. Finn, 134/529.

ARTICLE V.

EXECUTIVE DEPARTMENT.

Governor; lieutenant governor:

(54) SECTION 1. The executive power is vested in a governor who shall hold his office for two years. A lieutenant governor shall be chosen for the same term.

Relation of executive to the other departments. Sutherland v. Governor, 29/320.
Executive discretion is not open to judicial review. Sutherland v. Governor, 29/320. The execution of the laws is confided to many public officers besides the governor. People v. Salsbury, 134/537, 544.

Qualifications of governor and lieutenant governor:

(55) SEC. 2. No person shall be eligible to the office of governor or lieutenant governor, who has not been five years a citizen of the United States and a resident of this state two years next preceding his election; nor shall any person be eligible to either office who has not attained the age of thirty years.

Election of governor and lieutenant governor:

(56) SEC. 3. The governor and lieutenant governor shall be elected at the times and places of choosing the members of the legislature. The person having the highest number of votes for governor or lieutenant governor shall be elected. In case two or more persons shall have an equal and the highest number of votes for governor or lieutenant governor, the legislature shall, by joint vote, choose one of such persons.

Commander in chief:

(57) SEC. 4. The governor shall be commander-in-chief of the military and naval forces, and may call out such forces to execute the laws, to suppress insurrections and to repel invasions.

General duties of governor:

(58) SEC. 5. He shall transact all necessary business with the officers of government, and may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices.

It is conceived that, when the people elect a governor, it is expected that he will recommend, on his own motion, such measures as his judgment shall dictate, and that it is not contemplated that he may employ others, to whom he will, in any part, delegate these duties. To this end he is authorized to require information in writing from officers of the executive department upon any subject relating to the duties of their respective offices. Cahill v. Board of St. Auditors, 127/487, 488.

Execution of laws:

(59) SEC. 6. He shall take care that the laws be faithfully executed.

The governor has no authority to employ counsel, at the expense of the state, to assist in drafting laws and proposed amendments to the constitution. Cahill v. Board of St. Auditors, 127/487; Phelps v. Auditor General, 136/439,441.

Extraordinary sessions:

(60) SEC. 7. He may convene the legislature on extraordinary occasions.

Messages of governor:

(61) SEC. 8. He shall give to the legislature, and at the close of his official term to the next legislature, information by message of the condition of the state and recommend such measures to them as he shall deem expedient.

See note to section 5 of this article.

May convene legislature elsewhere:

(62) SEC. 9. He may convene the legislature at some other place when the seat of government becomes dangerous from disease or a common enemy.

Special elections:

(63) SEC. 10. He shall issue writs of election to fill such vacancies as occur in the senate or house of representatives.

Reprieves, commutations and pardons:

(64) SEC. 11. He may grant reprieves, commutations and pardons after convictions, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to regulations provided by law, relative to the manner of applying for pardons. Upon conviction for treason, he may suspend the execution of the sentence until the case shall be reported to the legislature at its next session, when the legislature shall either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the legislature at each session information of each case of reprieve, commutation or pardon granted, and the reasons therefor.

Pardons.—The pardoning power is vested exclusively in the governor, except in case of treason. The legislature cannot grant a pardon or commute a sentence, except in case of treason. Nor can the legislature abridge a pardon or commutation. People v. Brown, 54/15, 28; People v. Moore, 62/496, 498, 500; People v. Cummings, 88/249, 251; Rich v. Chamberlain, 104/441. Nor can a court indirectly exercise the pardoning power by indefinitely postponing sentence. People v. Brown, 54/15, 27; People v. Cummings, 88/249, 255. The power conferred by this section is practically unrestricted; and the exercise of executive clemency is a matter of discretion, subject, perhaps, to the remedy by impeachment in case of flagrant abuse. It is not a privilege, but an official duty lodged in the governor, not for the benefit of the convict only, but for the welfare of the people, who may properly insist upon the performance of that duty by him. Rich v. Chamberlain, 104/441. The co-ordinate branches of government have nothing to do with the pardoning power, except as the legislature may by law provide how applications may be made and is entitled to a report of action taken. Id. The act creating a pardon board does not preclude the direct exercise of executive clemency without the mediation of the board. People v. Marsh, 125/410. A pardon issued to one found guilty of crime, pending a review in the supreme court, is valid, since its acceptance is an admission of guilt and a waiver of review. Id. A pardon conditioned on the payment of a certain sum annually for five years, to the county to reimburse it for the expenses of prosecution, is valid. Id.

Lieutenant governor as acting governor:

(65) SEC. 12. In case of the impeachment of the governor, his removal from office, death, inability, resignation, or absence from the state the powers and duties of the office shall devolve upon the lieutenant governor, for the residue of the term, or until the disability ceases. When the governor shall be out of the state in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the state.

President pro tem. as acting governor:

(66) SEC. 13. During a vacancy in the office of governor, if the lieutenant governor die, resign, or be impeached, displaced, be incapable of performing the duties of his office, or absent from the state, the president *pro tempore* of the senate shall act as governor until the vacancy be filled or the disability cease.

President of senate; casting vote:

(67) SEC. 14. The lieutenant governor shall, by virtue of his office, be president of the senate. In committee of the whole he may debate all questions; and when there is an equal division, he shall give the casting vote.

The lieutenant governor has no casting vote in case of an equal division of the senate on the passage of a bill or joint resolution, or a "concurrent resolution" effecting legislation. Kelly v. Prescott, July 15, 1907.

Ineligibility to governorship:

(68) SEC. 15. No member of congress, nor any person holding office under the United States, or this state, shall execute the office of governor.

The office of mayor of Detroit is an office "under the state." Attorney General v. Detroit Common Council, 112/145.

Ineligibility of governor to appointment:

(69) SEC. 16. No person elected governor or lieutenant governor shall be eligible to any office or appointment from the legislature, or either house thereof, during the time for which he was elected. All votes for either of them for any such office shall be void.

Compensation of acting governor:

(70) SEC. 17. The lieutenant [governor] and president of the senate *pro tempore* when performing the duties of governor, shall receive the same compensation as the governor.

The word "governor," after "lieutenant," is omitted in the engrossed copy of the constitution, although it appears in this section as printed in the convention journals.

Authentication by great seal:

(71) SEC. 18. All official acts of the governor, his approval of the laws excepted, shall be authenticated by the great seal of the state, which shall be kept by the secretary of state.

A citation issued by the governor and directed to a state officer to show cause why he should not be removed from office is not such an official act as needs authentication by the great seal. Att'y Gen. v. Jochim, 99/358, 378.

Commissions to be under seal:

(72) SEC. 19. All commissions issued to persons holding office under the provisions of this constitution shall be in the name and by the authority of the people of the state of Michigan, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

ARTICLE VI.

JUDICIAL DEPARTMENT.

Judicial power:

(73) SECTION 1. The judicial power is vested in one supreme court, in circuit courts, in probate courts, and in justices of the peace. Municipal courts of civil and criminal jurisdiction may be established by the legislature in cities.

Judicial department.—Relation of the judicial department to the others discussed. Sutherland v. Governor, 29/320. The judicial department is that one of the three co-ordinate parts of the sovereignty, which acts for the state in expounding the laws and enactments. Royce v. Goodwin, 22/496, 499. For a comparison of the judicial systems under the two constitutions, see People v. Aud. Gen., 5/193. Many officers besides judges and justices of the peace aid in the administration of justice. People v. Salsbury, 134/537, 544.

Judicial power.—The judicial power of courts is generally understood to be the power to "hear and determine" controversies between adverse parties and questions in litigation. Daniels v. People, 6/381, 388; Underwood v. McDuffie, 15/361, 368; Risser v. Hoyt, 53/185, 193. The broadest definition ever given to the judicial power confines it to controversies between conflicting parties in interest. Lloyd v. Judge, 56/236, 243. It is not in the power of the legislature to make that judicial which is not so by nature. State Tax Law Cases, 54/408. A referee in determining facts submitted to him does not exercise judicial power in the constitutional sense. His determination of the existence of a fact is the same in law as an agreement of parties that such fact does exist. Underwood v. McDuffee, 15/361, 369. Under C. L. 3921 the auditor general, in passing upon an application for a certificate of error, acts ministerially rather than judicially, and hence that statute does not contravene this section. Northrup v. Maneka, 126/550. The power of the insurance commissioner to grant or revoke a license is ministerial and not judicial. Ins. Co. v. Raymond, 70/485, 506. The power to examine and commit persons charged with crimes is not in the proper sense of the term judicial power. It may be vested in other persons than courts, as well as in courts. Allor v. Wayne Auditors, 43/76, 100. It also admits of grave doubt whether the power of letting or holding to bail is judicial power within the meaning of the constitution. Daniel v. People, 6/381, 388. But the taking of a compaint, and the examination of witnesses and the determination therefrom whether or not an offense has been committed, preliminary to issuing a warrant, involve judicial action, which can be taken only by a court and which cannot be performed by a clerk. People v. Colleton, 59/573, 576. It is by no means free from doubt what classes of probate proceedings under our system are to be treated as judicial proceedings in the proper sense of that term. Lloyd v. Judge, 56/236, 243. Commissioners on claims act in a certain sense judicially in the allowance of claims against an estate, but are not a "court" in the constitutional sense. Their appointment is not in violation of this provision of the constitution. Shurbun v. Hooper, 40/503, 504. The functions of judges in equity cases, in dealing with questions of fact and law, are a well settled part of the judicial power. The right to have equity controversies dealt with by equitable methods is sacred. The cognizance of equitable questions belongs to the judiciary as a part of the judicial power, and under our constitution must remain vested where it always has been. Brown v. Judge, 75/274, 284, 285.

Judicial power vested.—This section vests the whole judicial power of the state in the courts and officers named, the only exceptions being those contained in secs. 16 and 23 of this article, relating to circuit

court commissioners and courts of conciliation. Chandler v. Nash, 5/409, 417; Risser v. Hoyt, 53/185, 193; State Tax Cases, 54/408; People v. Cummings, 88/249, 251. Judicial power can be vested only in courts and judicial officers and all the judges and judicial officers, without exception, must be elected directly by the people of the state or of their local districts. Allor v. Wayne Auditors, 43/76, 97. Joint resolution 4 of 1901, creating a board to audit claims against the disorganized county of Manitou, with power to apportion the amount allowed against its former territory, conferred judicial power on the board in violation of this section. Fitch v. Board of Auditors, 133/178. But it is only by implication and not by any expressed language that the power to vest the judicial power of the state elsewhere than in the courts and officers named is taken from the legislature, if the legislature is in fact destitute of the power, and that implication may be weakened or overcome by counter implications. Streeter v. Paton, 7/341, 346. Whether or not the power of letting to bail is a judicial power, it may still be conferred upon circuit court commissioners under the constitution. Daniels v People, 6/381, 387.

Courts.—The constitution, in apportioning the judicial power, as well as in affirming the immunity of life, liberty and property, has always been understood to guarantee to each citizen the right to have his title to property and other legal privileges determined by the general tribunals of the state. Jackson v. People, 9/111, 117. By courts, as the word is used in the constitution, we understand permanent organizations for the administration of justice and not those special tribunals provided for by law, that are occasionally called into existence by particular exigencies and that cease to exist with such exigencies. Streeter v. Paton, 7/341, 348; Shurbun v. Hooper, 40/503, 505; Risser v. Hoyt, 53/185, 193; Bissell v. Heath, 98/472, 477. No court, in the exercise of its functions, can be lawfully subjected to the control or interference of any authority, or can receive directions for any purpose, except from such other courts as are authorized to have "superintending control over inferior courts." Allor v. Wayne Auditors, 43/76, 97. Courts deal only with legal questions. N. W. Mfg. Co. v. Judge, 58/381, 385. That which is not judicial they are expressly debarred from exercising. State Tax Cases, 54/408; Lloyd v. Judge, 56/239.

Municipal courts.—This provision is a plain reservation of the power to carve out of the judicial power vested in the other courts named such authority as it would be proper to confer upon city courts and to create such courts for its exercise. The extent of authority to be given such courts, subject to the restriction that it must not exceed what can properly pertain to a municipal court, must be determined by the legislature. Covell v. Kent Co. Treasurer, 36/332, 333. Municipal courts have existed from time immemorial and their functions are not unknown. Heath v. Kent Judge, 37/372, 375. They are created only for the common judicial business of a municipal tribunal. Scott v. Judges, 58/312. The establishment of such courts is germane to the subject matter of acts incorporating cities and of acts revising city charters. People v. Hurst, 41/328, 333; Att'y Gen. v. Amos, 60/372; People v. Pond, 67/98, 101. The constitutional jurisdiction of the circuit court cannot be interfered with or made subordinate to that of the municipal court. Jones v. Judge, 35/494, 497; Heath v. Judge, 37/372, 376; Allen v. Judge, 37/474, 476; G. R., N. & L. S. R. R. Co. v. Gray, 38/461; People v. Hurst, 41/328, 334. Circuit courts derive their judicial powers from the constitution, while municipal courts may be established by the legislature. Nichols v. Judge of Superior Court, 130/187. While municipal courts cannot be considered as inferior courts, yet they are limited in their jurisdiction by the residence of the parties. G. R., N. & L. S. R. R. Co. v. Gray, 38/461, 468; Denison v. Smith, 33/155, 157. In transitory actions they have jurisdiction over persons who are not actually residents, but who were served with process within the city limits. Elliott v. Farwell, 44/186, 188. They may be given exclusive original jurisdiction over suits brought by or against city officers. C. & W. M. Ry. Co. v. Nester, 63/657, 661. It is not necessary that these courts should be given both civil and criminal jurisdiction. People v. Hurst, 41/328, 333; Covell v. Kent Co. Treasurer, 36/332. A municipal court cannot be authorized to try extra municipal crimes. Allor v. Wayne Auditors, 43/76. Nor can questions of title be tried by municipal courts under city ordinances. Beecher v. People, 38/289; People v. Stott, 90/343; Jackson v. People, 9/112. But they may be given original jurisdiction over crimes committed within the city. People v. Hurst, 41/328, 334; People v. Gallagher, 75/512, 526. And exclusive jurisdiction over offenses triable by a justice of the peace, when committed within the city. Perrot v. Pierce, 75/578, 579. These courts so far as they act under city by-laws, are not designed to decide between man and man, or to administer general laws. They are ordained to prevent disorder in matters of local convenience and to regulate the use of public and quasi public easements so as to prevent confusion. Jackson v. People, 9/111, 117. For a history of the mayor's and recorder's court of Detroit, see People v. Hurst, 41/328; Swift v. Judges, 64/479.

Organization of supreme court:

(74) SEC. 2. For the term of six years and thereafter, until the legislature otherwise provide, the judges of the several circuit courts shall be judges of the supreme court, four of whom shall constitute a quorum. A concurrence of three shall be necessary to a final decision. After six years the legislature may provide by law for the organization of a supreme court, with the jurisdiction and powers prescribed in this constitution to consist of one chief justice and three associate justices, to be chosen by the electors of the state. Such supreme court, when so organized, shall not be changed or discontinued by the legislature for eight years thereafter. The judges thereof shall be so classified that but one of them shall go out of office at the same time. The term of office shall be eight years.

Act 6 of 1887 provided for five justices of the supreme court, whose term of office should be ten years. Act 250 of 1903 provides for eight justices of the court, whose term of office is eight years.

Under the provisions of this section, prior to the reorganization of the supreme court, the office of judge of the supreme court was not a distinct office from that of circuit judge, but two sets of duties and one salary were attached to the one office of circuit judge. People v. Aud. Gen., 5/193; Royce v. Goodwin, 22/496, 499.

Power of supreme court:

(75) SEC. 3. The supreme court shall have a general superintending control

over all inferior courts, and shall have power to issue writs of error, *habeas corpus*, *mandamus*, *quo warranto*, *procedendo*, and other original and remedial writs, and to hear and determine the same. In all other cases it shall have appellate jurisdiction only.

The general jurisdiction of the supreme court to determine the constitutionality of legislative enactments is not limited so as to exclude laws involving political rights. Giddings v. Sec'y of State, 93/1, 4. The general superintending control, which the supreme court possesses, does not extend to the judicial action of the houses of the legislature in perfecting their organization and performing their duties. People v. Mahaney, 13/481, 493; Aud. Gen. v. Supervisors, 89/552, 567. The supreme court has no original, but only appellate, equity jurisdiction. Bank of Mich. v. Niles, Walk. 398, 399; King v. Carpenter, 37/363, 365. For a discussion of what is meant by "inferior courts," see Swift v. Judges, 64/479. The houses of the legislature are not "inferior courts" in the sense of the constitution, even when exercising such judicial powers as are vested in them, and their determinations are not subject to judicial review. People v. Mahaney, 13/481, 493; Aud. Gen. v. Supervisors, 89/522, 567.

The supreme court has no jurisdiction over questions reserved by circuit judges. Sanger v. Truesdail, 8/543; Jones v. Smith, 14/334. The jurisdiction of writs of error is plenary as given by the constitution: it extends to all errors, of fact as well as of law; and includes all the common law means of executing such writs. Teller v. Wetherell, 6/46, 47. The writ of procedendo has been practically superseded for many years by the writ of mandamus, and we are not aware of any example of its use in this state. People v. Swift, 59/529, 541. The writ of certiorari out of the supreme court is a constitutional writ and the authority to issue it cannot be taken away by the legislature. Specht v. Detroit, 20/168 171.

Terms of supreme court:

(76) SEC. 4. Four terms of the supreme court shall be held annually at such times and places as may be designated by law.

Practice in courts; law and equity; master in chancery:

(77) SEC. 5. The supreme court shall, by general rules, establish, modify, and amend the practice in such court and in the circuit courts, and simplify the same. The legislature shall, as far as practicable, abolish distinctions between law and equity proceedings. The office of master in chancery is prohibited.

The very wise provision, which directs the legislature to abolish distinctions between law and equity proceedings, is carefully worded and requires it to be done only so far as practicable. It does not blend legal and equitable interests, although no doubt it does favor the removal of such distinctions between them as are nominal, rather than real. Brown v. Judge, 75/274, 284. Rules of practice for the circuit courts were made by the supreme court at an early day and have existed since, changed and revised from time to time. The imposition of this duty upon the supreme court carries with it the obligation upon the circuit courts to be governed by the rules made and precludes the making of conflicting rules. Railroad Co. v. Eaton Circuit Judge, 128/495.

Judicial circuits; additional salaries:

(78) SEC. 6. The state shall be divided into judicial circuits, in each of which the electors thereof shall elect one circuit judge, who shall hold his office for the term of six years, and until his successor is elected and qualified. The legislature may provide for the election of more than one circuit judge in the judicial circuit in which the city of Detroit is or may be situated, and in the judicial circuit in which the county of Saginaw is or may be situated, and in the judicial circuit in which the county of Kent is or may be situated, and in the judicial circuit in which the county of St. Clair is or may be situated. And the circuit judge or judges of such circuits, in addition to the salary provided by the constitution, shall receive from their respective counties such additional salary as may from time to time be fixed and determined by the board of supervisors of said county. And the board of supervisors of each county in the upper peninsula, and in the counties of Bay, Washtenaw, Genesee, Ingham and Jackson, and the counties in the judicial circuit in which the county of Isabella is or may be situated, in the lower peninsula, is hereby authorized and empowered to give and to pay to the circuit judge of the judicial circuit to which said county is attached, such additional salary or compensation as may from time to time be fixed and determined by such board of supervisors. This section as amended shall take effect from the time of its adoption.

Amendment of 1907. As at first adopted this section provided for eight circuits and ended with the word "qualified." By amendment of 1881, the special provision as to the Wayne circuit were added. By amendment of 1883–4, and the special provisions as to the upper peninsula counties were inserted. By amendment of 1887–8 the special provisions as to the Saginaw circuit were incorporated. By amendment of 1889 the special provisions as to the Kent circuit were inserted. By amendment of 1903

the special provisions as to Bay and Washtenaw were inserted. By amendment of 1905, the provision as to Genesee was added.

Circuits and judges.—Each circuit must include at least one county, and there can be no more than one circuit court in a county (except as since provided by constitutional amendments). G. R., N. & L. S. R. R. Co. v. Gray, 38/461, 464. As to the Kent circuit amendment, see People v. Burch, 84/408. The constitution does not in terms require that a circuit judge shall reside within his circuit or prevent the election of one who resides elsewhere. Royce v. Goodwin, 22/496, 498.

Additional salary.—The power of the board of supervisors is not exhausted when it has once voted additional compensation, but it may afterwards revoke the same, even during the term of an incumbent. Adsit v. Smith, 129/4.

Alteration of circuits:

(79) SEC. 7. The legislature may alter the limits of circuits or increase the number of the same. No alteration or increase shall have the effect to remove a judge from office. In every additional circuit established the judge shall be elected by the electors of such circuit and his term of office shall continue, as provided in this constitution for judges of the circuit court.

Jurisdiction of circuit courts:

(80) SEC. 8. The circuit court shall have original jurisdiction in all matters civil and criminal not excepted in this constitution, and not prohibited by law, and appellate jurisdiction from all inferior courts and tribunals and a supervisory control of the same. They shall also have power to issue writs of *habeas corpus*, *mandamus*, injunction, *quo warranto*, *certiorari*, and other writs necessary to carry into effect their orders, judgments and decrees, and give them general control over inferior courts and tribunals within their respective jurisdictions, and in all such other cases and matters as the supreme court shall by rule prescribe.

Amendment of 1893. As at first adopted the section closed with the word "jurisdictions," and the amendment added "and in all such other cases and matters as the supreme court shall by rule prescribe."

Jurisdiction.—The circuit court is the highest court of general original jurisdiction in the state Heath v. Judge, 37/372, 375; Union Dep. Co. v. Backus, 92/58. Jurisdiction in its favor is presumed. Arnold v. Nye, 23/286. It has always been a state court and is in no sense a local court. Whallon v. Judge, 51/503, 511. Its process is coextensive with the boundaries of the state. People v. McCaffrey 75/115, 125. Yet, in respect to persons and property, its jurisdiction cannot be exercised beyond the limits of the county. Turrill v. Walker, 4/180. Its constitutional jurisdiction cannot be interfered with by the legislature. People v. Judge, 18/483, 488; Heath v. Judge, 37/375; Allen v. Judge, 37/474, 476; Atkins v. Borstler, 46/552, 554; Eddy v. Township, 73/123, 129; Union Depot Co. v. Backus, 92/58. But it is subject to legislative exceptions. People v. Hurst, 41/328, 334; C. & W. M. Ry. Co. v. Nester, 63/657, 660; Eddy v. Township, 73/123, 129. The expression in this section—"not prohibited by law"—refers to causes which may be instituted in these courts and not to the practice and proceedings in those causes when once instituted. The sole power conferred upon the legislature by that provision is to determine what causes may be instituted in the courts. It has no reference to the power to enforce their orders, judgments and decrees by punishment for contempt or by other proceedings. Nichols v. Judge of Superior Court, 130/187, 194. The constitution does not prohibit the legislature from giving the circuit courts jurisdiction in cases where the amount claimed is less than $100 Milroy v. Spurr Mount. Iron Mine Co., 43/231, 237. Constitutional jurisdiction over transitory actions against non-residents of state. Atkins v. Borstler, 46/552, 554. Jurisdiction affected by amount claimed. Strong v. Daniels, 3/466; Webb v. Mann, 3/139; Raymond v. Hinkson, 15/113; Inkster v. Carver, 16/484; Merrill v. Butler, 18/294; Dinnen v. Baxter, 18/457; Kittridge v. Miller, 45/478· Eldred v. Woolaver, 46/241; Fix v. Sissung, 83/563. The general policy of the state divides the original criminal jurisdiction into that which is exercised by courts having plenary common law powers and that which is exercised by justices of the peace. People v. Mangold, 71/335, 337.

Supervisory control.—The constitution gives the circuit courts supervisory control over inferior courts, subject to the appellate jurisdiction of the supreme court. Thompson v. Sch. Dist., 25/483, 485; Taylor v. Judge, 32/95; McBride v. Grand Rapids Com. Coun., 32/360; Merrick v. Twp. Board, 41/630; Zook v. Blough, 42/487; Wilson v. Bartholomew, 45/41; Upjohn v. Twp. Board of Health, 46/542, 544; Mann v. Tyler, 56/564, 566; Swift v. Judges, 64/479, 480. A township board, acting in a quasi judicial capacity in the removal of an assessor of a school district, is an inferior tribunal over which the circuit court is given a general control. Merrick v. Township Board, 41/630, 631.

Writs.—Prior to the amendment of 1893 and the adoption of the circuit court rule 107, the supreme court held that this provision, construed in connection with section 3 of this article, did not give circuit courts authority to issue these writs generally and in all cases to which they apply, but only to enable them to carry into effect their own orders, judgments and decrees. McBride v. Com. Council of Grand Rapids, 32/360, 367. The constitution does not give circuit courts power in any case to issue writs of error. Teller v. Wetherell, 6/46, 48. The writ of scire facias may issue from the circuit court as a common law writ. McRoberts v. Lyon et al., 79/25, 33.

Right of appeal.—No person has a constitutional right to a second trial, after having been duly convicted before a court of competent jurisdiction, by an appeal to another tribunal; neither is there an inherent right to appeal from a judgment of an inferior to a court of superior jurisdiction for the purpose of securing a trial upon the merits. The right to appeal is statutory and does not exist at common law. The legislature may grant or take it away, or prescribe in what cases appeals may be taken. Sullivan v. Haug, 82/548, 554, 557.

Salary of circuit judges; ineligibility to other office:

(81) SEC. 9. Each of the judges of the circuit courts shall receive a salary,

payable quarterly. They shall be ineligible to any other than a judicial office during the term for which they are elected, and for one year thereafter. All votes for any person elected such judge for any office other than judicial, given either by the legislature or the people, shall be void.

Although prior to the reorganization of the supreme court the circuit judges were judges of the supreme court, yet they were entitled to only one salary for the two sets of duties. People v. Aud. Gen., 5/193.

Supreme court reporter; written decisions; appointments by judges:

(82) SEC. 10. The supreme court may appoint a reporter of its decisions. The decisions of the supreme court shall be in writing and signed by the judges concurring therein. Any judge dissenting therefrom shall give the reasons of such dissent in writing under his signature. All such opinions shall be filed in the office of the clerk of the supreme court. The judges of the circuit court within their respective jurisdictions may fill vacancies in the office of county clerk and of prosecuting attorney; but no judge of the supreme court or circuit court shall exercise any other power of appointment to public office.

For a history of the office of reporter and the publication of the supreme court reports, see Ayres v. State Auditors, 42/422. As to the reporter's duties, see Matter of Head Notes, 43/641. The circuit judge may, within his jurisdiction, fill a vacancy in the office of prosecuting attorney, but he cannot appoint a special prosecuting attorney to investigate a charge of crime or to conduct an examination before a justice of the peace. Sales v. Judge, 82/84, 89, 90.

Terms of circuit courts; judges to sit in other circuits:

(83) SEC. 11. A circuit court shall be held at least twice in each year in every county organized for judicial purposes, and four times in each year in counties containing ten thousand inhabitants. Judges of the circuit court may hold courts for each other, and shall do so when required by law.

Act 31 of 1903, § 3, providing for the drawing of a fresh panel of jurors once in each calendar month, neither abolishes the terms of court, nor provides for twelve terms, nor for one continuous term, in such a manner as to conflict with this section. Fornia v. Wayne Circuit Judge, 140/631.

Act 152 of 1895, authorizing the governor to designate a judge of another circuit to hold court temporarily in any circuit where business has accumulated beyond the capacity of the local judge, is constitutional. In re Bromley's Estate, 113/53.

Seat of justice.—The place in the county where the circuit court is held has always been regarded as the seat of justice for that county. These places have been usually located at the county seat, but do not necessarily constitute a part thereof. The county seat exists without this court and the location of the seat of justice has always been a subject of legislative discretion. There is no restriction in the constitution which prevents the legislature from providing that certain terms of the circuit court may be held elsewhere than at the county seat. Whallon v. Judge, 51/512, 515.

Clerks of courts:

(84) SEC. 12. The clerk of each county organized for judicial purposes shall be the clerk of the circuit court of such county. The supreme court shall have the power to appoint a clerk for such supreme court.

Amendment of 1881. The section originally provided that the county clerk should be clerk of the supreme court when held within his county.

The county clerk is a constitutional officer and clerk of the circuit court. As neither the constitution nor the statutes prescribe his duties as clerk of the court, he is subject to all the legitimate orders of the court. Smith v. Kent Circuit Judge, 139/463.

Probate courts:

(85) SEC. 13. In each of the counties organized for judicial purposes there shall be a court of probate. The judge of such court shall be elected by the electors of the county in which he resides, and shall hold his office for four years, and until his successor is elected and qualified. The jurisdiction, powers and duties of such courts shall be prescribed by law.

The duties performed by probate judges are in no sense services performed for their respective counties and they are in no sense county officers. They exercise a portion of the judicial and prerogative power of the state and cannot be subjected to the direction of any body inferior to the legislature. Douvielle v. Manistee Supervisors, 40/585, 588. But probate judges must reside within the counties for which elected. Royce v. Goodwin, 22/496; 498, 499. The probate court derives none of its jurisdiction or power from the common law, but must find the warrant for all of its doings in the statute. Grady v. Hughes, 64/540, 545; Corby v. Durfee, 96/11, 12; Dudley v. Gates, 124/440; Nichols v. Judge of Sup. Court of Grand Rapids, 130/187. Probate courts are not empowered to construe wills when presented for probate. Dudley v. Gates, 124/440.

Vacancies in judicial offices:

(86) SEC. 14. When a vacancy occurs in the office of judge of the supreme circuit or probate court, it shall be filled by appointment of the governor, which shall continue until a successor is elected and qualified. When elected, such successor shall hold his office the residue of the unexpired term.

The appointee under this provision holds only until the election of a successor. People v. Lord, 9/227, 230; Lawrence v. Hanley, 84/405; People v. Burch, 84/408, 418; Adsit v. Sec'y of State, 84/420, 431; People v. Palmer, 91/283, 286.

Courts of record:

(87) SEC. 15. The supreme court, the circuit and probate courts of each county shall be courts of record, and shall each have a common seal.

The courts of chancery are courts of record. Mersereau v. Miller, 112/103.

Circuit court commissioners:

(88) SEC. 16. The legislature may provide by law for the election of one or more persons in each organized county, who may be vested with judicial powers not exceeding those of a judge of the circuit court at chambers.

Circuit court commissioner.—The office of circuit court commissioner, known long prior to the adoption of the present constitution, was meant to be perpetuated by this section. McClintock v. Laing et al., 19/300, 304. The powers of this officer cannot be conferred upon a city recorder ex officio. Id. Nor upon a notary public. Chandler v. Nash, 5/409. The circuit court commissioner is a subordinate and assistant to the circuit court rather than an independent judicial officer Burger's Case, 39/203, 205.

Judicial powers.—The extent of the powers of these officers is not clearly defined and the supreme court has never attempted to lay down a rule by which it can be unvaryingly determined. It has, however, decided that, with the exception of certain things which had been lawfully done by them prior to the adoption of the present constitution, such officers have no authority to perform acts strictly judicial. Mulhern v. Judge, 11/528 (citing Burger's Case, 39/204; Risser v. Hoyt, 53/185).

Powers at chambers.—As to the powers which a judge may exercise at chambers and may be conferred upon circuit court commissioners, see Daniels v. People, 6/381, 388; Streeter v. Paton, 7/341, 347; Edgarton v. Hinchman, 7/352, 355; Eslow v. Albion, 27/4; Rowe v. Rowe, 28/353; Buddington's Case, 29/471; DeMyer v. McGonegal, 32/120, 131; Watson v. Randall, 44/514; Hamilton's Case, 51/174 Goodchild v. Foster, 51/599; Risser v. Hoyt, 53/185; Rowe v. Kellogg, 54/206; McDonald v. Supervisors, 91/461. The exercise of the following powers has been denied to circuit court commissioners: The power to adjudicate upon tax titles. Waldby v. Callendar, 8/430, 431; Case v. Dean et al., 16/12, 21. To pass upon the validity of the process, order, judgment or sentence of any court. Burger's Case, 39/203, 206; Boinay v. Coats, 17/411, 416. To issue the writ of habeas corpus in any case involving the exercise of judicial powers. Rowe v. Rowe, 28/353; Buddington's Case, 29/472; Burger's Case, 39/203. To constitute a juvenile court in certain counties for the trial of delinquent children. Hunt v. Wayne Circuit Judges, 142/93.

Justices of the peace:

(89) SEC. 17. There shall be not exceeding four justices of the peace in each organized township. They shall be elected by the electors of the townships, and shall hold their offices for four years and until their successors are elected and qualified. At the first election in any township they shall be classified as shall be prescribed by law. A justice elected to fill a vacancy shall hold his office for the residue of the unexpired term. The legislature may increase the number of justices in cities.

Under the constitution there have always been four justices provided for each township, and the term of years of the office, and the provision for classification of the terms at the first election tend to support the theory that it was intended by the constitution that there should be four justices in each township; but the constitution strictly, by its terms, does not provide that there must be four justices in a township, but that there shall be not exceeding four. Brooks v. Hydorn, 76/273, 276. A justice of the peace is a constitutional officer and cannot be legislated out of office by the reorganization of a municipality or the amendment of a charter. Gratopp v. Van Epps, 113/590. A local act limiting the number of justices in cities is not obnoxious to this section. Attorney General v. Loomis, 141/547. But it may well be doubted if it is within the power of the legislature to set up a community in which the powers and duties of justices of the peace shall have no recognition. Id.

The constitution requires all justices to be elected, and it is against public policy to have them chosen otherwise except for temporary purposes. Edison v. Almy, 66/329; Brooks v. Hydorn, 76/275. Where a charter provision for the election of justices in cities fixes no time for their term of office to begin or end, the statutory provision for July 4 prevails. Hulbert v. Henry, 105/211. The provision that justices in the city of Detroit shall hold office "for four years," in act 460 of 1895, does not conflict with the constitutional provision as to their term. Messenger v. Teagan, 106/654.

Jurisdiction of justices:

(90) SEC. 18. In civil cases, justices of the peace shall have exclusive jurisdiction to the amount of one hundred dollars, and concurrent jurisdiction to the amount of three hundred dollars, which may be increased to five hun-

dred dollars, with such exceptions and restrictions as may be provided by law. They shall also have such criminal jurisdiction and perform such duties as shall be prescribed by the legislature.

Civil jurisdiction.—As affected by amount claimed. Strong v. Daniels, 3/466; Wells v. Scott, 4/347; Gurney v. Mayor, 11/202; Raymond v. Hinkson, 15/113; Inkster v. Carver, 16/484; Merrill v. Butler, 18/294; Dinnen v. Baxter, 18/457; Henderson v. Desborough, 28/170; Kittridge v. Miller, 45/478: Eldred v. Woolaver, 46/241.While values of property depend in a large measure upon opinion and this court, when the value is near the limit, will not declare in all cases a want of jurisdiction, if, in good faith, the declaration alleges the value within the jurisdiction of the circuit court, it will not hold that jurisdiction is obtained when the fraud upon the court is apparent. Fix v. Sissung, 83/561, 563. Jurisdiction may be increased to $500 in cities. Messenger v. Teagan, 106/654. The power to exempt municipal corporations from suits before a justice is plainly given to the legislature. Root v. Mayor, 3/433, 436; Gurney v. Mayor, 11/202. The constitutional jurisdiction of justices of the peace cannot be taken away by the legislature. Allen v. Judge, 37/474, 476; Allor v. Wayne Auditors, 43/100. But it is subject to definition and regulation by the legislature. O'Connell v. Lumb. Co., 113/124. There is nothing in this section prohibiting the legislature from giving to municipal courts such jurisdiction as is here given to justices of the peace. Attorney General v. Loomis, 141/547, 560.

Criminal jurisdiction.—The criminal jurisdiction of justices is statutory. Sarah Way's Case, 41/303; Allor v. Wayne Auditors, 43/100. And it is competent for the legislature to vest in the police court of a city exclusive jurisdiction to try criminal cases triable by justices, when committed within the city. Perrott v. Pierce, 75/578 The legislature has the right to provide for the filing of security for costs, or of an order from the prosecuting attorney, before justices may entertain criminal complaints and for their reporting all such proceedings to the prosecutor, under penalty of forfeiture of fees for non-compliance. Sunderlin v. Ionia County Supervisors, 119/535.

Justices' courts.—The constitution does not regard justices' courts as courts exercising special and limited powers in the strict sense, but they are, within the limits fixed, the ordinary tribunals of justice, and their authority is in no sense contrary to the course of the common law, any more than that of the circuit courts. Goodsell v. Leonard, 23/374.

Conservators of the peace:

(91) SEC. 19. Judges of the supreme court, circuit judges and justices of the peace shall be conservators of the peace within their respective jurisdiction.

This section vests in justices of the peace the jurisdiction as conservators of the peace, as it was held and recognized when the constitution took effect—including the authority to apprehend offenders against the criminal laws and to hold examinations, and commit, bind over, or hold to bail—and the legislature cannot deprive them of this authority. Averill v. Perrott, 74/296, 298. The power to examine and commit persons charged with crimes not cognizable by justices of the peace belongs to the duties of conservators of the peace. Allor v. Wayne Auditors, 43/76, 100; Attorney General v. Loomis, 141/547, 560. But a magistrate, acting under the statutes relative to the examination of persons charged with crimes, has only such powers as are conferred by the statutes: and, prior to the the amendment of 1863 to R. S. ch. 163, sec. 16, C. L. '71, 7858, he could not commit a witness for refusing to testify upon examination. Farnham's Case, 8/89. Each person holds his authority, not as a member of the court while in session, but as an officer in that special capacity. Daniels v. People, 6/381, 390. The fact that certain officers are made conservators of the peace within their respective jurisdictions cannot be held to prevent the legislature from making other officers conservators of the peace. Attorney General v. Loomis, 141/547. And an act creating a municipal court and conferring power upon its judge to act as an examining magistrate, but not attempting to deprive any justice of the peace of similar jurisdiction, does not conflict with this section. Attorney General v. Loomis 141/547.

Election of circuit judges:

(92) SEC. 20. The first election of judges of the circuit courts shall be held on the first Monday in April, one thousand eight hundred and fifty-one, and every sixth year thereafter. Whenever an additional circuit is created, provision shall be made to hold the subsequent election of such additional judge at the regular elections herein provided.

The manifest intent of the constitution is that the judiciary shall be elected. Upon the creation of a new circuit-judgeship, a vacancy in office exists, which may be filled provisionally by appointment by the governor, until the next election, general or special. People v. Burch, 84/408, 415, 416.

Election of probate judges:

(93) SEC. 21. The first election of judges of the probate courts shall be held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and fifty-two, and every fourth year thereafter.

Vacancy by removal from jurisdiction:

(94) SEC. 22. Whenever a judge shall remove beyond the limits of the jurisdiction for which he was elected, or a justice of the peace from the township in which he was elected, or by a change in the boundaries of such township shall be placed without the same, they shall be deemed to have vacated their respective offices.

The constitution does not prevent the election of a person as circuit judge who resides outside of the circuit, nor does it in terms require him to reside therein during his term of office. Royce v. Goodwin, 22/496. A justice brought within a city by change of boundaries is deemed to have vacated his office. People v. Geddes, 3/70. But there is nothing in the constitution requiring a justice to do all his business at any fixed office; nor anything to prevent his holding court outside of his township. In exercising his judicial powers he represents the state rather than the township. Faulks v. People, 39/200.

Courts of conciliation:

(95) SEC. 23. The legislature may establish courts of conciliation with such powers and duties as shall be prescribed by law.

This section is an express exception to section one of this article, which vests the judicial power in the courts and officers there named. Chandler v. Nash, 5/409, 418. The creation of the state court of mediation and arbitration was authorized by this section. The statute creating it is not unconstitutional in providing for appointive members of the court. Renaud v. State Court of Med. and Arb., 124/648· Pingree v. State Court of Med. and Arb., 130/229.

Appearance in person or by attorney or agent:

(96) SEC. 24. Any suitor in any court of this state shall have the right to prosecute or defend his suit, either in his own proper person, or by an attorney or agent of his choice.

Such "agent" in a court of record must be an attorney and a disbarred atttoney cannot represent a party in a court of record as an "agent." Cobb v. Judge, 43/289.

Prosecutions for libel:

(97) SEC. 25. In all prosecutions for libels the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends the party shall be acquitted. The jury shall have the right to determine the law and the fact.

In a criminal prosecution the truth alone, if not published with good motives and for justifiable ends is not always a complete defense. But in civil cases it is well settled that no damages can be given for libel that contains no falsehood. Sullings v. Shakespeare, 46/408, 411. The constitution, in regard to criminal prosecutions for libel, restricts the defense of truth to cases where the libel, even though true, is published for good motives and justifiable ends. This is only another form of saying that malicious publications are not privileged from criminal prosecution, even if true. Maclean v. Scripps, 52/214, 221. The provision that the jury shall determine both the law and the fact does not deprive the trial judge of the power to rule upon the introduction of evidence in libel cases, either civil or criminal. Thibault v. Sessions, 101/279, 289.

Unreasonable searches and seizures; search warrants:

(98) SEC. 26. The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation.

Searches and seizures.—The main purpose of this provision was to make sacred the privacy of the citizens' dwelling and person against everything but process issued upon a showing of legal cause for invading it; but this provision was not directed against an open and public levy upon property after the usual method of execution levies and under apparent authority of law. Weimer v. Bunbury, 30/200, 208. The requirement that screens be removed from saloons during the time they are required to be closed does not infringe this provision. Robinson v. Haug, 71/38, 41. Nor is the requirement that druggists report under oath all sales of intoxicating liquors, in local option counties, a violation of this provision People v. Henwood, 123/317. But a court order directing officers to enter private premises and take possession of a wrecked boiler, etc., to use in evidence in the trial of a party for criminal negligence in causing the explosion, violates this provision. Newberry v. Carpenter, 107/567.

No warrant without probable cause.—The constitution expressly prohibits the issue of warrants of search or seizure of persons or property, except on a sworn showing, which must be of facts on personal knowledge such as would establish the legal probability of the cause of complaint. Robison v. Miner and Haug, 68/549, 557; Procter v. Prout, 17/473; Brown v. Kelley, 20/27; Hackett v. Judge, 36/334; Badger v. Reade, 39/771; Swart v. Kimball, 43/443; Maxwell v. Deens, 46/35; Delong v. Briggs, 47/624; Meddaugh v. Williams, 48/172; Sheridan v. Briggs, 53/569; People v. Heffron, 53/527.

Trial by jury; waiver:

(99) SEC. 27. The right of trial by jury shall remain but shall be deemed to be waived in all civil cases unless demanded by one of the parties in such manner as shall be prescribed by law.

Right of trial by jury.—This right is secured by constitutional provisions and cannot be substantially changed by legislation. Underwood v. People, 32/1, 2; Swart v. Kimball, 43/443, 448. The right as it had existed and become known to the jurisprudence of the state previous to the adoption of the constitution of 1850. Swart v. Kimball, 43/443, 448; Wixom v. Bixby, 127/479, 485. This right was a trial by a jury of twelve good men and true, whose determination must be unanimous upon the rights of the parties. McRae v. R. R. Co., 93/399, 405. The constitution in retaining the right of trial by jury tacitly refers to and adopts the common law number. Hill v. People, 16/351, 355.

Shall remain.—Parties cannot be deprived of this right. Parsons v. Russell, 11/113, 121; Tabor v. Cook, 15/322, 325; People v. Doesburg, 16/133; People v. Harding, 53/56; Risser v. Hoyt, 53/185, 195, 203; State Tax Law Cases, 54/371; Edwards v. Symons, 65/348, 354; People v. Peterson, 93/27, 29; Chandler v. Graham, 123/327, 329. But the legislature may prescribe the manner of selecting jurymen. People v. Harding, 53/48; Hewitt v. Judge, 71/287, 291; Saginaw v. Campau, 102/594, 597. The right of trial by jury is not violated by the provision in the general tax law for putting a purchaser in possession by writ of assistance. Ball v. Ridge Copper Co., 118/7. A reversal of the decision of a circuit judge denying a motion for a new trial is not an invasion of the right of trial by jury, as it gives the party a right to a new trial by another jury. Hintz v. M. C. R. Co., 132/305.

Rights of parties accused:

(100) SEC. 28. In every criminal prosecution the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than twelve men in all courts not of record; to be informed of the nature of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and have the assistance of counsel for his defense.

The right of trial by jury was denied to persons accused of crime in the early history of the race. It was not until after a long and persistent struggle that the right was secured. People v. Warren, 122/504, 508.

Criminal prosecution.—Proceedings for contempt are not criminal causes within the intent and meaning of the constitution of the United States or of this state. In re Chadwick, 109/588, 597. One charged with the violation of a city ordinance regulating the use of public places, though subject to imprisonment therefor, is not within the constitutional guaranty of the right of trial by jury. In re Cox, 129/635.

Jury of the vicinage.—The right to a trial by a jury of the vicinage is indefeasible. Swart v. Kimball 43/443, 449; Fowler's Case, 49/235, 238; Hill v. Taylor, 50/549, 551; People v. Harding, 53/48, 53; Saginaw v. Campau, 102/594, 598. The panel must come from the body of the county, which means from every township in the county. Hewitt v. Judge, 71/287, 291. But a jury for a municipal court may be summoned from the municipality instead of from the whole county. Such jury is more correctly a jury of the vicinage than one taken from the body of the county. People v. Hurst, 41/328, 334. And this provision of the constitution does not preclude the circuit court from exercising the common law power of changing the venue, upon application of the people and upon cause shown. People v. Peterson, 93/27,30. In an action of debt in the name of the people, to recover a forfeiture, the defendant is not entitled to a jury, under this provision, without paying to the justice the fees therefor, as prescribed in civil actions. People v. Hoffman, 3/248.

Number of jurors.—The constitution adopts the common law number of twelve in courts of record. Hill v. People, 16/351, 355; People v. Luby, 56/551; McRae v. R. R. Co., 93/399, 405. Since a jury in courts not of record may consist of less than twelve men, and the respondent may entirely waive a trial by jury, he can consent to a trial by less than six men in such a court. People v. Lane, 124/271, 273.

Impartial jury.—A person called as a juror is presumed to be qualified and impartial until the contrary is shown. Holt v. People, 13/224, 228. A jury is not impartial whose members are already so impressed with the guilt of the accused that eyidence will be required to overcome such impressions. People v. Moll, 137/692, 698; Stephens v. People, 38/739; People v. Barker, 60/277; People v. Shufelt, 61/237, 243.

Speedy trial.—The act of 1861, authorizing the arrest of a pardoned convict without warrant, for an alleged violation of the conditions of his pardon, deprived him of his right to a speedy trial. and privilege from arrest and confinement without due process of law. People v. Moore, 62/496, 502. It has been held that the right to a speedy and public trial by an impartial jury cannot be waived. People v. Warren, 122/504, 508.

Public trial.—Act 408 of 1893, § 18, authorizing the exclusion from the court room of all persons, except those necessarily in attendance, upon the trial of a cause wherein evidence of licentious, lascivious, degrading or peculiarly immoral acts will probably be given, violates the right of a public trial. People v. Yeager, 113/228. An order by the court in a criminal case, directing an officer to stand at the door of the court-room "and see that the room is not overcrowded, but that all respectable citizens be admitted and have an opportunity to get in when they shall apply," violates the right to a public trial. People v. Murray, 89/276.

Waiver of jury.—It has been held that this is a right that cannot be waived, and that a trial by the judge, even by the consent of the prisoner, is erroneous. People v Warren, 122/504, 508; People v. Smith, 9/193; Hill v. People, 16/351; People v. Jackson, 8/110; Swart v. Kimball, 43/443; People v. Harding, 53/56; Grand Rapids v. Bateman, 93/135. But a charter provision that, in prosecutions for violations of ordinances, a failure to demand a jury shall be deemed a waiver of the right thereto, is not repugnant to the constitution. In re Cox, 129/635; People v. Jackson, 8/110. And the accused may waive a jury in justice court, if he so elects; but silence or mere failure to demand a jury is not to be taken as a waiver. Ward v. People, 30/115. He has a statutory right to be tried in justice court either with or without a jury as he may elect. People v. Steele, 94/437.

To be informed.—The rules requiring information to be given of the nature of the accusation are made on the theory that an innocent man may be indicted as well as a guilty one, and that an innocent man will not be able to prepare for trial without knowing what he is to meet on the trial. People v. Olmstead, 30/431, 438. An information should give notice of the particular offense to be proved, and should omit nothing essential to a description of the offense. Brown v. People, 29/232; Chapman v. People, 39/357; Merwin v. People, 26/298; Hall v. People, 43/417. But the legislature may change and simplify the common law forms of charging offenses, provided the new forms are such as to inform the accused substantially of the nature and character of the offense charged. Brown v. People, 29/232.

To be confronted.—The testimony in criminal cases is always to be given in open court and in the presence of the accused; and the practice of sending papers to the jury-room, even in civil cases, is dangerous, and not often to be resorted to, and in criminal cases never. People v. Dowdigan, 67/92. Evidence against a person accused or convicted of a penal offense cannot be received in his absence for the purpose of imposing or increasing his sentence. Fowler's Case, 49/234. Although the people in a criminal case cannot take proofs outside of the state, yet the respondent may. People v. Howard, 50/239, 246. If the respondent allows, by stipulation, depositions to be put in, he waives his right

to be confronted with the witnesses against him. People v. Murray, 52/288, 290. This provision does not apply to proof of facts in their nature essentially documentary which can be proved only by the original or by a copy officially authenticated. People v. Jones, 24/115, 225; People v. Dow, 64/717, 720. And the testimony of a witness taken on the preliminary examination is admissible in evidence on proof of the death of the witness, if otherwise unobjectionable. People v. Dowdigan, 67/95, 96. And the testimony of a witness on a former trial, if such witness is dead. People v. Sligh, 48/54, 56. In a prosecution for polygamy, the certificate of a county clerk that, after diligent search, he is unable to find any record of a marriage between certain parties, is inadmissible for the purpose of showing that the marriage did not take place. People v, Goodrode, 132/542.

Counsel.—When a party is not on trial for any offense, no exception can be taken to his not having the assistance of counsel. People v. Lauder, 82/109.

Immunity after acquittal; right of bail:

(101) SEC. 29. No person after acquittal upon the merits shall be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties except for murder and treason when the proof is evident or the presumption great.

Former acquittal.—While the language of this section differs from that used in the United States constitution, the law of jeopardy is doubtless the same under both provisions. In re Archer, 130/540, 545; Village of Northville v. Westfall, 75/603. The court may set aside a verdict in a criminal case in case of a conviction, but not in case of an acquittal. People v. Warren, 122/504, 508. If a jury is impanelled, proofs taken and the prosecution rests, the defendant is entitled to a verdict; and a discharge of the jury without verdict and without any overruling necessity operates as a final discharge of the accused. People v. Jones, 48/554; People v. Harding, 53/481, 487; People v. Taylor, 117/583; People v. Parker, 145/488. Where, after the jury is sworn, a juror is found to be so biased as to be unfit to sit, the jury may be discharged and the respondent will not be deemed to have been placed in jeopardy by the proceedings. In re Ascher, 130/540. Also, where, after a jury had been sworn, a peremptory challenge of one juror was allowed and a second jury sworn. People v. Dolan, 51/610, 612. If, on receiving the report of a disagreement, the judge directs the discharge of the jury, he thus determines the necessity of their discharge without a verdict; and this is no bar to a new trial. People v. Harding, 53/481, 487. The discharge of a jury duly impanelled and sworn, without sufficient cause and without the consent of respondent, bars another trial for the same offense. People v. Gardner, 62/307, 311. An acquittal of the charge of burglary with intent to commit larceny is not a bar to a subsequent prosecution for the same larceny, charged to have been committed. People v. Parrow, 80/567, 571. Nor is an acquittal of an assault committed upon one person a bar to a trial for an assault upon another in the same affray, where the injury was inflicted by a separate blow and instigated by a different volition. People v. Ochotski, 115/601.

Where a conviction and judgment are set aside on proceedings instituted by the respondent on the claim that he has not had a public trial, the plea of "former jeopardy" cannot avail. People v. Murray, 89/276, 292. And where a person procures his discharge upon a legal question involved, after a jury is sworn in the case, he is not procluded, by thus evading a trial upon the merits, from setting up his discharge as a bar to a subsequent prosecution for the same offense. People v. Taylor, 117/583. Since no one can be twice put in jeopardy, no writ of error or other proceeding lies, on behalf of the public, to review a judgment of acquittal in a criminal case, but there is no rule of law to prevent the review of proceedings which have not gone to trial. People v Swift, 59/529, 541. And the acquittal of a charge of violating a village ordinance, prosecuted as a criminal proceeding, cannot be reviewed Vill. of Northville v. Westfall, 75/603, 609. The doctrine, that no one shall be subject to be twice put in jeopardy for the same offense, is older than our constitution, and has been applied by courts to misdemeanors as well as crimes; but it has not been applied to actions for the recovery of penalties, where such actions are civil in form. Vill. of Northville v. Westfall, 75/603, 608.

Bail.—The right to bail is a constitutional privilege. Daniels v. People, 6/381, 389. Under this section and C. L. 11863, authorizing justices to let to bail, a justice may admit to bail a person charged with a crime the punishment for which is imprisonment for life or years, as in case of rape. People v. Burwell, 106/27.

Treason and conviction thereof:

(102) SEC. 30. Treason against the state shall consist only in levying war against or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless upon the testimony of two witnesses to the same overt act, or on confession in open court.

Excessive bail and fines; cruel or unusual punishment; detention of witnesses:

(103) SEC. 31. Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted, nor shall witnesses be unreasonably detained.

Cruel or unusual punishment.—This provision came under the direct cognizance of the supreme court in People v. Morris, 80/637, 639, and the rule adopted for determining excessiveness of punishment was, that the minimum punishment provided by the law must be so disproportionate to the offense as to shock the moral sense of the people. A law which provides a greater maximum penalty for receiving stolen property than for the larceny of it cannot be held to authorize cruel and unusual punishment. People v. Smith, 99/644, 646. The "local option" law (act 207 of 1889) is not in conflict with this provision. People v. Whitney, 105/622. A punishment for a crime done in the state prison is not cruel and unusual, where it is in the same degree as though the crime were committed outside the prison walls. People v. Huntley, 112/569. The act for the punishment of fraudulent debtors does not impose cruel and unusual punishment. Dummer v. Nungesser, 107/481.

Excessive fines.—Act 200, 1895, protecting fish in the Saginaw river and tributaries, does not by failing to fix a maximum fine, violate this provision. There is no express constitutional requirement that the legislature shall, in enacting penal statutes, fix the maximum penalty. When it is not done, the power to impose a fine is limited by the constitutional provision against excessive fines. In re Yell, 107/229.

Witness against self; due process of law:

(104) SEC. 32. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law.

Witness against self.—The witness must be the sole judge of whether he will avail himself of his constitutional privilege, and if he says on his oath, that his answer would criminate him, his statement is conclusive. In re Mark, 146/714. This privilege does not protect any one from showing himself, by his own testimony, guilty of fraud of dishonesty. Jennings v. Prentice, 39/421. No inference can be drawn from the refusal of a witness to answer a question because it may tend to criminate himself. People v. Mannausau, 60/15, 20. A respondent in a criminal case, who takes the stand in his own behalf, waives his constitutional privilege, to the extent that he may be required to answer any material questions, though they tend to prove him guilty of some other crime than the one for which he is on trial. People v. Dupounce, 133/1. But the fact that a witness testified on an ex parte hearing to facts resulting in the arrest of another for perjury, does not waive the privilege of such witness when called to testify at the preliminary examination of the person so arrested. In re Mark, 146/714. An ordinance requiring one operating an automobile on the street to display thereon a number does not compel him to furnish evidence against himself. People v. Schneider, 139/673. Act 183 of 1899, requiring druggists in local option counties to report under oath all sales of intoxicating liquors, is not a violation of this provision. People v. Henwood, 123/317; People v. Shuler, 136/161. And in a prosecution for violating the provisions of that act, such statements of sales voluntarily filed are competent as voluntary admissions. People v. Robinson, 135/511.

Deprivation of life, liberty or property.—This constitutional protection applies as well to corporations, both private and municipal, as to natural persons. Park Comrs. v. Common Council, 28/228, 241; Detroit v. D. & H. P. R. Co., 43/140, 147, 148. And on the other hand, neither the state nor a municipality has any more right to deprive the owner of his possessions than has the private citizen. Buford v. Grand Rapids, 53/98, 102. Every one in legal custody has a right to legal protection. Cannon's Case, 47/481, 485. No one holds his liberty subject to state comity or in any less tenure than constitutional right. Cannon's Case, 47/481, 483. The right to contract a debt or other personal obligation is included in the right to liberty. Kuhn v. Com. Council, 70/537. When property is to be taken, every constitutional safeguard framed to govern such action must be observed. Power's Appeal, 29/504, 510; Tabor v. Cook, 15/322, 325. This prohibition was intended to protect persons from being deprived of their property without their consent, unless by due process of law. Chappee v. Thomas, 5/53, 59. Property does not consist merely of the title and possession. It includes the right to make any legal use of it and the right to pledge or mortgage it, or to sell and transfer it; also the right to contract a debt or to enter into a bond or writing obligatory. Kuhn v. Com. Council, 70/537. A right in action is as much property as any tangible possession and as much within the rules of constitutional protection. Dunlap v. T., & A. A. G. T. Ry. 50/470. Private reputation is entitled to full legal protection. Park v. Detroit Free Press Co., 72/560, 566. But a public office cannot be called property within the meaning of these constitutional provisions. Att'y Gen. v. Jochim, 99/358, 367.

Due process of law.—This means the law of the land, that is, laws that are general in their operation and not special acts passed to affect the rights of particular individuals in a way different from that in which the same rights of others are affected by existing laws. Sears v. Cottrell, 5/251, 254; Att'y Gen. v. Jochim, 99/371. Due process of law is not necessarily judicial; the executive or administrative process by which the government is carried on and the order of society maintained is as much due process as is judicial process. Weimer v. Bunbury, 30/200, 212. When applied to proceedings of a judicial character it is intended to secure to the citizen the right to a trial according to the forms of law, before his person or property shall be condemned. Parsons v. Russell, 11/113; Ames v. Booming Co., 11/139, 148; Rouse, Hazard & Co. v. Judge, 104/234. Act 214 of 1905, for licensing transient merchants, providing that the council of any city or village might suspend its operation in any particular case violated this provision. Brown v. Superior Court Judge, 145/413.

Imprisonment for debt or militia fine:

(105) SEC. 33. No person shall be imprisoned for debt arising out of, or founded on a contract, express or implied, except in cases of fraud or breach of trust, or of moneys collected by public officers, or in any professional employment. No person shall be imprisoned for a militia fine in time of peace.

Imprisonment for debt.—On contract. Chappee v. Thomas, 5/53; People v. McAllister, 19/215; Stephenson's Case, 32/60; Pennock v. Fuller, 41/153; Risser v. Hoyt, 53/205; McArthur v. Oliver, 53/305. A party cannot be imprisoned for non-payment of temporary alimony awarded, except as for contempt. Steller v. Steller, 25/159. Our constitution has put all courts on the same footing in restraining imprisonment for debt, and the enforcement of decrees in equity by attachment has been superseded, as far as possible, by milder remedies. Bailey v. Cadwell, 51/217, 220. This provision does not prohibit proceedings for contempt to enforce a chancery order requiring a payment over of a fund on deposit in a foreign bank. Carnahan v. Carnahan, 143/390. On execution in replevin. Fuller v. Bowker, 11/204. There is no constitutional reason why imprisonment is not lawful for a wrongful act not in any way dependent on contract. People v. White, 53/540.

Exceptions.—The "cases of fraud" mentioned include as well cases where the fraud is made use of to avoid payment of, as those where it was used in obtaining the contract creating the debt. (Christiancy and Manning, JJ.) Bromley v. People, 7/472, 487. The law for the punishment of fraudulent debtors does not violate this section. Dummer v. Nungesser, 107/481. Breach of promise to marry, in the absence of any charge involving fraud, is within the constitutional inhibition against imprisonment for debt. Tyson's Case, 32/262. But breach of promise of marriage, where seduction is charged, is not within the inhibition. Sheahan's Case, 25/145; Badger v. Reade, 39/776. Professional employment can relate only to some of those occupations universally classed as professions, the general duties and character of which courts must be expected to understand judicially. Real estate agencies are no more professions than any other business agencies. Pennock v. Fuller, 41/155.

Competency of witnesses:

(106) SEC. 34. No person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief.

This refers only to the competency and not to the credibility of a witness. People v. Jenness, 5/319.

Style of process:

(107) SEC. 35. The style of all process shall be, "In the name of the People of the State of Michigan."

This provision does not apply to supervisors' warrants on tax rolls, but only to process issued by courts or judicial officers. Tweed v. Metcalf, 4/579, 588; Wisner v. Davenport, 5/501, 503; Forbes v. Darling, 94/621, 625; Penfield v. Slyfield, 110/343. The fact that the words, "In the name of the people of the state of Michigan," are inserted within quotation marks favors the idea that the phrase must be used verbatim. Johnson v. Ins. Co., 12/216, 224; Forbes v. Darling, 94/621, 625. The constitution does not require writs to be tested in the name of the people Id. The object of this provision is to make this style the distinguishing feature of all process. The requirement being constitutional, a defect therein is jurisdictional. Forbes v. Darling, 94/621, 627. A citation from the governor to an officer to show cause why he should not be removed is not within this provision; it applies to the judicial department only. Att'y Gen. v. Jochim, 99/358, 378. Neither the declaration nor the rule to plead, when an action is commenced by them, need be "In the name of the people of the state of Michigan." Penfield v. Slyfield, 110/343. Nor a citation from the probate court in proceedings under the drain law. Wolpert v. Newcomb, 106/361.

ARTICLE VII.

ELECTIONS.

Qualifications of electors:

(108) SECTION 1. In all elections, every male inhabitant of this state, being a citizen of the United States, every male inhabitant residing in this state on the twenty-fourth day of June, eighteen hundred thirty-five, every male inhabitant residing in this state on the first day of January, eighteen hundred fifty, every male inhabitant of foreign birth who, having resided in the state two years and six months prior to the eighth day of November, eighteen hundred ninety-four, and having declared his intention to become a citizen of the United States two years and six months prior to said last named day, and every civilized male inhabitant of Indian descent, a native of the United States and not a member of any tribe, shall be an elector and entitled to vote; but no one shall be an elector or entitled to vote at any election unless he shall be above the age of twenty-one years, and has resided in this state six months, and in the township or ward in which he offers to vote twenty days next preceding such election: *Provided*, That in time of war, insurrection or rebellion, no qualified elector in the actual military service of the United States, or of this state, or in the army or navy thereof, shall be deprived of his vote by reason of his absence from the township, ward or state in which he resides, and the legislature shall have the power, and shall provide the manner in which, and the time and place at which such absent electors may vote, and for the canvass and return of their votes to the township or ward election district in which they respectively reside or otherwise.

Amendment of 1893–94. As at first adopted the word "white" appeared before the word "male," wherever the latter was used. By amendment of 1869–70 that word was stricken out. By amendment of 1865–66 the proviso at the end was added. The change made in 1894 was the insertion of the requirement of full citizenship of the United States and the lengthening of the time of residence in state and township or ward.

Qualification of electors.—The source of all authority to vote at popular elections is the constitution; the electorate is constituted by the fundamental law; and the qualifications of electors must be uniform throughout the state. Coffin v. Election Commissioners, 97/189. But the qualifications of voters at school meetings have never been identical with those of electors as defined in the constitution. Belles v. Burr, 76/1, 9.

Township or ward.—No one can vote anywhere but in the township or ward where he resides, except as now provided in the case of soldiers. People v. Blodgett, 13/127; [This is the decision on the "soldiers' voting law" of Feb. 5, 1864, which led to the adoption of the proviso]; People v. Maynard, 15/463, 468; Att'y Gen. v. Holihan, 29/116, 119; Att'y Gen. v. Common Council, 58/213, 216; Warren v. Board of Registration, 72/401. For election purposes each ward is made by the constitution equivalent to a township. Allor v. Wayne Auditors, 43/76, 102. The intention of the voter is an important factor in determining residence. Harbaugh v. Cicott, 33/241, 250.

Votes to be by ballot:

(109) SEC. 2. All votes shall be given by ballot, except for such township officers as may be authorized by law to be otherwise chosen.

The object of this provision was to secure the entire independence of the electors, to enable them to vote according to their own individual convictions of right and duty. People v. Cicott, 16/312. It merely declares the policy of the state to assure a secret, as distinguished from an open, or announced vote, and does not permanently establish a particular mode of voting. Hence it is not infringed by

act 234 of 1903, authorizing the use of voting machines. City of Detroit v. Election Inspectors, 139/548. And the voter cannot be compelled to disclose the contents of his ballot. Id; People v. Hurlbut, 24/77; Common Council v. Rush, 82/532, 540.

Privilege from arrest:

(110) SEC. 3. Every elector, in all cases, except, treason, felony or breach of the peace, shall be privileged from arrest during his attendance at election, and in going to and returning from the same.

Exemption from militia duty and attendance at court:

(111) SEC. 4. No elector shall be obliged to do militia duty on the day of election, except in time of war or public danger, or to attend court as a suitor or witness.

Residence of elector:

(112) SEC. 5. No elector shall be deemed to have gained or lost a residence by reason of his being employed in the service of the United States or of this state; nor while engaged in the navigation of the waters of this state or of the United States; or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum at public expense; nor while confined in any public prison, except that honorably discharged soldiers, sailors and marines who have served in the military or naval forces of the United States or of this state, and who reside in soldiers' homes established by this state, may acquire a residence where such home is located.

Amendment of 1893–94. By this amendment all after the words "public prison" were added to the section as it originally stood.

The Michigan soldiers' home is an asylum within the meaning of this section and an inmate thereof neither gains nor loses a residence. Wolcott v. Holcomb, 97/361. [The decision in this case led to the amendment above mentioned.]

Purity of elections:

(113) SEC. 6. Laws may be passed to preserve the purity of elections and guard against abuses of the elective franchise.

This provision does not authorize, by direction or indirection, the disfranchisement, without his own fault or negligence, of any elector under the constitution. Attorney General v. City of Detroit, 78/545. Whether the regulation of the enjoyment of the elective franchise is reasonable or unreasonable is for the determination of the legislature, so long as such regulation does not become destruction. Common Council v. Rush, 82/532, 538. The provision of law making it unlawful for the commissioners to place in more than one column on the ballot the name of any candidate nominated by two or more parties, is within this provision. Todd v. Election Com'rs, 104/474. Registration is imperative and must be complied with before the elector can vote; and the failure of the board of registration to meet is of no avail to the elector. People v. Kopplekom, 16/342, 347.

Soldiers, seamen and marines not residents:

(114) SEC. 7. No soldier, seaman or marine, in the army or navy of the United States, shall be deemed a resident of this state in consequence of being stationed in any military or naval place within the same.

Disqualification of duelists:

(115) SEC. 8. Any inhabitant who may hereafter be engaged in a duel, either as principal or accessory before the fact, shall be disqualified from holding any office under the constitution and laws of this state, and shall not be permitted to vote at any election.

ARTICLE VIII.

State officers:

(116) SECTION 1. There shall be elected at each general biennial election a secretary of state, a superintendent of public instruction, a state treasurer, a commissioner of the land office, an auditor general, and an attorney general for the term of two years. They shall keep their offices at the seat of government and shall perform such duties as may be prescribed by law.

Term of office:

(117) SEC. 2. Their term of office shall commence on the first day of January, one thousand eight hundred and fifty-three, and of every second year thereafter.

Vacancies:

(118) SEC. 3. Whenever a vacancy shall occur in any of the state offices, the governor shall fill the same by appointment, by and with the advice and consent of the senate if in session.

Board of state auditors and canvassers:

(119) SEC. 4. The secretary of state, state treasurer, and commissioner of the state land office shall constitute a board of state auditors to examine and adjust all claims against the state, not otherwise provided for by general law. They shall constitute a board of state canvassers, to determine the result of all elections for governor, lieutenant governor and state officers, and of such other officers as shall by law be referred to them.

Board of state auditors.—The board of state auditors is a separate and independent tribunal, over which the supreme court has no supervisory control and no jurisdiction by mandamus to coerce or direct their action. Dewey v. State Auditors, 32/191; Ambler v. Aud. Gen., 38/746, 750; Ayres v. State Auditors, 42/422, 426; Aud. Gen. v. Treasurer, 73/28, 31; N. W. Mfg. Co. v. Judge, 58/381, 384. But mandamus lies to compel the performance of mandatory duties imposed by the legislature outside of the exclusive powers vested in the board by the constitution. Ayres v. State Auditors, 42/422, 428. Under this provision the legislature has the power to provide by general law some other tribunal to adjust certain claims, such as expenses of inquests upon the dead bodies of strangers. Aud. Gen. v. Judge, 101/212, 214. At the time this article was adopted, the statute providing for the allowance of such claims was in force and had been during the state's existence; it is too late to question its validity. Locke v. Speed, 62/408, 412. The compensation provided by the constitution for the officers composing this board covers all duties lawfully imposed on them as members of the board. Warner v. Auditor General, 129/648.

State cannot be sued.—The state cannot be sued in its own courts without its consent, nor can any suit be maintained against a state officer, when really against the state. Mich. St. Bank v. Hastings, Walk. 9; 1 Doug. 225; Mich. St. Bank v. Hammond, 1 Doug. 527; Ambler v. Aud. Gen., 38/746, 750; Ayres v. State Auditors, 42/422, 427; Burrill v. Aud. Gen., 46/256; McElroy v. Swart, 57/500; Bresler v. Butler, 60/40; Supervisors v. Aud. Gen., 68/665; Supervisors v. Aud. Gen., 69/1; Aud. Gen. v. Co. Treasurer, 73/28, 31; Aud. Gen. v. Supervisors, 73/182. Nor can a counter-claim or set-off be asserted in a suit brought by the state. Id. 73/28, 182; Aud. Gen. v. Supervisors, 76/295. The auditing of claims against the state is not, and never has been, a proceeding in the nature of a suit. It is an administrative function. Lachance v. Aud. Gen., 77/563, 566.

Board of state canvassers.—The determination of this board is subject to no review except as provided in the next section. People v. Cicott, 16/301; Royce v. Goodwin, 22/501; Ayres v. State Auditors, 42/427; Newton v. Canvassers, 94/459; Vance v. Canvassers, 95/466. As to when a succeeding board may be compelled to convene and recanvass returns, see Belknap v. State Canvassers, 95/155; Rich v. State Canvassers, 100/453. When mandamus will not be issued against. Baker v. St. Canvassers, 69/656.

Tie votes:

(120) SEC. 5. In case two or more persons have an equal and the highest number of votes for any office, as canvassed by the board of state canvassers, the legislature in joint convention shall choose one of said persons to fill such office. When the determination of the board of state canvassers is contested, the legislature in joint convention shall decide which person is elected.

ARTICLE IX.

Salaries:

(121) SECTION 1. The governor shall receive an annual salary of four thousand dollars; the judges of the circuit court shall each receive an annual salary of two thousand five hundred dollars; the state treasurer shall receive an annual salary of one thousand dollars; the superintendent of public instruction shall receive an annual salary of one thousand dollars; the secretary of state shall receive an annual salary of eight hundred dollars; the commissioner of the land office shall receive an annual salary of eight hundred dollars; the attorney general shall receive an annual salary of eight hundred dollars. They shall receive no fees or perquisites whatever for the performance of any

duties connected with their office. It shall not be competent for the legislature to increase the salaries herein provided.

Amendment of 1889. The governor's salary was originally $1,000, and this amendment raised it to $4,000. The circuit judges' salary was originally $1,500, but was raised to $2,500 by amendment of 1881–82. The latter amendment, either by accident or design, omitted the auditor general from the list of officers, leaving his salary to be fixed by the legislature.

ARTICLE X.

COUNTIES.

Body corporate:

(122) SECTION 1. Each organized county shall be a body corporate, with such powers and immunities as shall be establishd by law. All suits and proceedings by or against a county shall be in the name thereof.

History of the county system in this state. Att'y Gen. v. Wayne Auditors, 73/56. No county organization can be complete without more than one township, for one supervisor cannot be organized into a "board." People v. Maynard, 15/463, 472. A county organization, though irregular, will not be disturbed after long recognition and acquiescence. Id. 470. An organized county, under our constitution, signifies a county having within itself the necessary means for performing its functions independently of any other county; with its lawful officers and machinery for carrying out the powers and performing the duties belonging to that class of corporate bodies. Among the necessary incidents to a county are subdivisions in which electors can lawfully vote and townships whose supervisors may exercise the legislative and administrative powers of the corporation. People v. Maynard, 15/463, 468.

Sixteen townships in county; city as county:

(123) SEC. 2. No organized county shall ever be reduced by the organization of new counties to less than sixteen townships as surveyed by the United States unless in pursuance of law a majority of electors residing in each county to be affected thereby shall so decide. The legislature may organize any separate city into a separate county, when it has attained a population of twenty thousand inhabitants, without reference to geographical extent, when a majority of the electors of a county in which such city may be situated, voting thereon, shall be in favor of a separate organization.

Fractional townships, as surveyed by the United States, are townships within the meaning of this provision. Rice v. Ruddiman, 10/125. This prohibition is meant to prevent the unreasonable reduction of a county in size, and not to preclude the division of surveyed townships, if convenience requires, in organizing new counties. Bay County v. Bullock, 51/544. It precludes the reduction of a county below sixteen townships without a vote of the people as well by attaching the territory to an existing county as by using it to form an entirely new one. Bay County Supervisors v. Edmunds, 139/466.

County officers:

(124) SEC. 3. In each organized county there shall be a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, chosen by the electors thereof, once in two years, and as often as vacancies shall happen, whose duties and powers shall be prescribed by law. The board of supervisors in any county may unite the offices of county clerk and register of deeds in one office, or disconnect the same.

A county may exist without officers. Carleton v. People, 10/250. Officers are to be chosen by the electors of the county. People v. Maynard, 15/463, 471. The prosecuting attorney is a constitutional officer, but his duties are to be prescribed by law. People v. Trombley, 62/278. He must be an attorney at law. People v. May, 3/598. And a male citizen. Attorney General v. Abbott, 121/540.

Offices at county seat:

(125) SEC. 4. The sheriff, county clerk, county treasurer, judge of probate and register of deeds shall hold their offices at the county seat.

Mandamus lies to compel obedience to this requirement. Rice v. Shay, 43/380. And the sheriff and county clerk, as officers of the circuit court are required to attend sessions held elsewhere than at the county seat. Whallon v. Judge, 51/503.

Sheriff:

(126) SEC. 5. The sheriff shall hold no other office, and shall be incapable of holding the office of sheriff longer than four in any period of six years. He may be required by law to renew his security from time to time, and in default

of giving such security, his office shall be deemed vacant. The county shall never be responsible for his acts.

Upon the expiration of this constitutional limitation of the tenure of the office of sheriff, the under-sheriff and all the deputies go out of office with their principal. Lamoreaux v. Att'y Gen., 89/146, 149. A township supervisor is not disqualified by this section from holding the office of deputy sheriff. People v. Gosch, 82/22.

Board of supervisors:

(127) SEC. 6. A board of supervisors, consisting of one from each organized township, shall be established in each county, with such powers as shall be prescribed by law.

Review of the county system, under commissioners and later under a board of supervisors. Attorney General v. Wayne County Auditors, 73/53.

Board of supervisors.—The board of supervisors is one of our long established institutions, and no one can doubt, in reading the constitution, that it was designed to be perpetuated in its existing form, as an aggregation of town officers, and not as a single individual. People v. Maynard, 15/463, 472. The board is not dependent for its lawful existence upon the existence of a clerk constitutionally elected, The board can appoint a clerk, if there be none. Carleton v. People, 10/250, 254. The legislature cannot authorize more than one supervisor from each organized township, but there is nothing in the language of the constitution to prevent the legislature's granting other municipalities representation on the board. The president of a village may be made ex officio a member. Att'y Gen. v. Preston, 56/177; Holden v. Supervisors, 77/202. The legislature may, under the constitution, confer upon boards of supervisors such powers, and surround them with such limitations, as are not inconsistent with the powers and limitations prescribed by the constitution. Wayne County Supervisors v. Circuit Judge, 111/33. In view of this section, the power conferred by sec. 9 of this article is not so broad but that it is subject to legislative control. Wayne Co. Auditors v. Judge, 114/44.

City supervisors:

(128) SEC. 7. Cities shall have such representation in the board of supervisors of the counties in which they are situated as the legislature may direct.

This section neither grants power to, nor limits the authority of the legislature to give representation on the board to a city, but simply imposes the duty to give it some representation. Att'y Gen. v. Preston, 56/177, 180. The power to increase or diminish this representation is vested in the legislature and cannot be delegated to a city. Bolt v. Riordan, 73/508, 519. The office of supervisor in cities is created by the legislature. It may exist or not, at the legislative will. Having this authority, the right of the legislature to abolish that office or confer its functions upon another officer cannot be questioned. A supervisor in a city is not as essential as in a township and the mere fact that an officer of a city government is denominated a "supervisor" does not take away from the legislature the power to abolish the office or transfer its functions to another city officer. Att'y Gen. v. Cogshall, 107/181. But the legislature cannot transfer the functions of supervisor to another officer chosen by a constituency which had no power to confer such authority, amounting to a legislative appointment to office. Attorney General v. Gramlich, 129/630.

Removal of county seat:

(129) SEC. 8. No county seat once established shall be removed until the place to which it is proposed to be removed shall be designated by two-thirds of the board of supervisors of the county, and a majority of the electors voting thereon shall have voted in favor of the proposed location, in such manner as shall be prescribed by law.

The provisions of the constitution and our system of internal government presuppose the existence of a county seat as one of the essential features of county organization. Rice v. Shay, 43/382. In organizing a county, the legislature may provide for the original location of the county seat. Rice v. Shay, 43/380; Att'y Gen. v. Canvassers, 64/607. The county seat is not necessarily identical with the "seat of government." See notes under section 11, of article vi. The proposition for the removal of a county seat may originate with the board of supervisors, and it is immaterial that in the particular case the county seat was located by the legislature when the county was organized. Bagot v. Antrim County Supervisors, 43/577.

Tax for buildings, highway or bridges:

(130) SEC. 9. The board of supervisors of any county may borrow or raise by tax one thousand dollars for constructing or repairing public buildings, highways or bridges; but no greater sum shall be borrowed or raised by tax for such purpose in any one year, unless authorized by a majority of the electors of such county voting thereon.

The purchase or erection of public buildings is within the exclusive grant of power to the board of supervisors, and the Wayne county auditors have no control over them. Att'y Gen. v. Auditors, 73/53; Wayne Co. Auditors v. Judge, 114/44. This section was placed in the constitution in recognition of the fact that the tendency of the unlimited power to raise and expend large sums of money is to encourage the extravagant use of public funds, and to prevent raising unnecessary sums of money. Wayne Co. Supervisors v. Judge, 111/33. The provision as to highways relates to a county tax and then only for the construction and improvement of state and territorial roads. Boyce v. Aud. Gen., 90/326; Att'y Gen. v. Supervisors, 34/47. The act of 1897 providing for the construction of a bridge over Grand river in Ada township, Kent county, violates this section, in that it deprives the electors

of the right to determine by vote the improvements they desire to make and the taxes they are willing to subject themselves to on account thereof. Ada Twp. v. Judge, 114/77. C. L. 4051–56, authorizing boards of supervisors to provide for the construction of bridges on township boundaries and to apportion the expense to the townships, are not in conflict with this section. Ionia Co. Sup'rs v. Circuit Judge, 134/412. But act 63 of 1889, providing that the board of auditors of Wayne county shall supervise the construction of county buildings is in conflict with this section. Wayne Co. Auditors v. Circuit Judge, 114/44.

Claims against counties:

(131) SEC. 10. The board of supervisors, or, in the counties of Saginaw, Jackson, Washtenaw, Kent, Wayne and Genesee, the board of county auditors shall have the exclusive power to fix the compensation for all services rendered for, and to adjust all claims against, their respective counties, and the sum so fixed and defined shall be subject to no appeal.

Amendment of 1905. Originally only the county of Wayne was included in this section, but the others were inserted by successive amendments.

As to the relation of the two boards in Wayne county, see Att'y Gen. v. Auditors, 73/53; Clegg v. Auditors, 96/188.

Compensation and claims.—The "exclusive power" to fix compensation relates to services rendered for the county exclusively and does not preclude the legislature from prescribing the salary of a county officer—as the clerk—in the proper performance of whose duties the people of the whole state are interested. Wayne Co. Auditors v. Reynolds, 121/99. The claims referred to are only such as are presented for allowance against the county. A board cannot determine the compensation of its own members. Kennedy v. Gies, 25/28. Nor pass upon the claim of its own county against another county. Barry Co. v. Manistee Co., 33/497. Nor claims of the county against townships. People v. Wright, 19/351. The board of supervisors cannot allow the sheriff an annual salary for services "as jailer," including those for which the law provides fees. Plummer v. Township, 87/621. Nor allow one of its members compensation, as a member of a committee, for services performed when the board is not in session. Ewing v. Ainger, 96/594. As to the authority of the board of supervisors to offer rewards and the liability of the county therefor, see Stamp v. Cass Co., 47/330. In acting on claims boards may receive ex parte affidavits in support of them or may require legal evidence. Clark v. Ingham Supervisors, 38/658. And may require proof of the separate items of an account. Macdonald v. Supervisors, 42/545. The board cannot delegate to the county treasurer the auditing of accounts. Vincent v. Supervisors, 52/340. Although the constitution gives the board of supervisors the power to adjust all claims against the county, yet a limitation on this broad proposition is found in the following cases, and this rule applies where the law has pointed out another mode of adjustment. People v. Wayne Co. Auditors, 13/233; Kennedy v. Gies, 25/91; Mixer v. Manistee Co. Supervisors 26/425; McMahon v. Wayne Co. Auditors, 41/223; Endriss v. Chippewa County, 43/317; Van Wert v. School Dist., 100/334; Withey v. Osceola Co. Judge, 108/168; Wayne Co. Auditors v. Reynolds, 121/103; Cedar Creek Twp. v. Wexford Sup'rs, 135/124, 128. Act 169 of 1885, authorizing the auditor general to allow the bills of the militia for services rendered in aid of the civil authorities and to charge the same to the proper county, does not conflict with this provision. Auditor General v. Bay Co. Sup'rs, 106/662. Nor does act 96 of 1893, providing that the trial judge shall fix the compensation of an attorney appointed to conduct the defense in a criminal case. Withey v. Osceola Circuit Judge 108/168.

Fixed allowances.—These boards cannot alter allowances fixed by law or other methods of adjustment, but must audit and pay them as so fixed. People v. Supervisors of Macomb, 3/475; People v. Auditors of Wayne, 13/233; Kennedy v. Gies, 25/83; Mixer v. Manistee Supervisors, 26/422; Douvielle v. Supervisors, 40/589; Stowell v. Supervisors, 57/31, 34; Cicotte v. Wayne, 59/509, 514; Plummer v. Township, 87/621.

No appeal.—This section took away the right of appeal which existed before. People v. Supervisors of Macomb, 3/475, 477; Kennedy v. Gies, 25/83, 91; Endriss v. Chippewa, 43/317. And the action of the board in the adjustment of claims is final. People v. Wayne Auditors, 10/307; Mixer v. Manistee Supervisors, 26/422; Videto v. Jackson Supervisors, 31/116; Barry Co. v. Manistee Co., 33/497; Clark v. Ingham Supervisors, 38/658; Macdonald v. Supervisors, 42/545; Endriss v. Chippewa Co., 43/317; Stamp v. Cass Co., 47/330; Peck v. Kent Co., 47/477; Pistorius v. Supervisors, 51/125; Cicotte v. Wayne Co., 59/509, 513; Sherman v. Sanilac Supervisors, 84/113; Clegg v. Wayne Auditors, 96/191; People v. Hanifan, 99/517. As to the right of appeal before the adoption of the constitution of 1850, see Bacon v. Wayne, 1/462.

Action must not be arbitrary.—Boards cannot act arbitrarily in allowing, or disallowing, rejecting or refusing to receive claims lawfully presented. People v. Supervisors of Macomb, 3/475, 477; Marathon v. Oregon, 8/382; People v. Wayne Auditors, 10/307, 309; People v. Wayne Auditors, 13/233; Mixer v. Manistee Supervisors, 26/422, 426; Videto v. Jackson Supervisors, 31/116; Barry Co. v. Manistee Co., 33/497; Macdonald v. Muskegon Supervisors, 42/545; Endriss v. Chippewa Co., 43/317; Cicotte v. Wayne Co., 59/514; Hickey v. Supervisors, 62/99; Sherman v. Sanilac Supervisors, 84/113. After having once fixed a salary the board cannot change it without further action spread upon their records. It cannot be changed by parol. People v. Wayne Auditors, 41/4.

Mandamus.—As to when mandamus will lie against a board of supervisors in the matter of the allowance of claims, see People v. Macomb Supervisors, 3/475; Marathon v. Oregon, 8/382; People v. Wayne Co. Auditors, 13/233; Att'y Gen. v. St. Clair Supervisors, 30/388; McMahon v. Wayne Co. Auditors, 41/223; Peck v. Supervisors, 41/477; Pistorius v. Supervisors, 51/125; Vincent v. Supervisors, 52/340; Farnsworth v. Supervisors, 56/640; Stowell v. Supervisors, 57/31; Cicotte v. Wayne, 59/509; Hickey v. Supervisors, 62/94; Sherman v. Supervisors, 84/111; McKillop v. Cheboygan Co. Sup'rs, 116/614.

Suits against counties.—Courts are not deprived by this section of such original jurisdiction as they formerly possessed, and the abstract right to bring suit against the county still remains. Endriss v. Chippewa County, 43/175; Cicotte v. Wayne Co., 44/173; 59/509. And a board may be compelled by mandamus to refund a fine paid to prevent imprisonment on a judgment afterward reversed. McMahon v. Wayne Auditors, 41/223. The claim of one county for the care of a resident of another county sick with the smallpox can be recovered in an action for money paid, without presentation for allowance to the board of supervisors of the debtor county. Arenac Co. v. Iosco Co., 144/52.

Supervisors' power over highways, bridges and townships:

(132) SEC. 11. The board of supervisors of each organized county may

provide for laying out highways, constructing bridges, and organizing townships, under such restrictions and limitations as shall be prescribed by law.

Highways.—This section does not take from the township authorities the control over roads which they before possessed. It is not a provision which executes itself, but contemplates action by the legislature establishing restrictions and limitations before it becomes operative. It is not in its terms conclusive, and there is nothing to preclude the legislature from conferring power over this subject on the township highway commissioners, as well as the supervisors. People v. Nankin Highway Com'rs, 15/347, 351; Davies v. Supervisors, 89/295, 299. The highways and roads are put under the control of the supervisors, not absolutely, but under legal restrictions, which have confined them to state and territorial roads. Other roads are put under other officers, to avoid a clashing of jurisdictions. Att'y Gen. v. Bay Co. Supervisors, 34/46, 47. The board of supervisors has no authority to raise a tax for the purpose of repairing, through its own committees or members, state and territorial roads, thereby invading the jurisdiction of highway commissioners and overseers, whose duty it is to keep them in repair. Peninsular Savings Bank v. Ward, 118/87.

Township organization.—Boards of supervisors have the constitutional power to organize townships but they must do so under legislative restrictions. Attorney General v. Marr, 55/449.

ARTICLE XI.

TOWNSHIPS.

Township officers:

(133) SECTION 1. There shall be elected annually, on the first Monday of April, in each organized township, one supervisor, one township clerk, who shall be *ex officio* school inspector, one commissioner of highways, one township treasurer, one school inspector, not exceeding four constables, and one overseer of highways for each highway district, whose powers and duties shall be prescribed by law.

Organized township.—Townships, in which electors can lawfully vote and whose supervisors conjointly may exercise the legislative and administrative powers of the corporation, are necessary subdivisions of the county. A county cannot be organized without the existence of townships, and there must be more than one township. People v. Maynard, 15/463, 468, 472. The territorial extent of townships to be organized into counties should correspond with the original government survey thereof, unless the legislature otherwise provides. Attorney General v. Marr, 55/445. A new township, organized without special conditions becomes a "township" within the meaning of the constitution and laws, clothed with the same rights and powers and subject to the same duties as belong to new townships generally. It becomes severed from the school district organization in which it was formerly embraced. People v. Ryan, 19/203, 206. There is nothing to indicate that it was intended to embrace organized and incorporated cities and villages within the term "organized townships." White v. Supervisors, 105/612. Townships existed before the adoption of the present constitution. Id. The townships in which elections are held must be organized townships. People v. Maynard, 15/463, 468. An organization long recognized and acquiesced in, though irregular, will not be disturbed. People v. Maynard, 15/463; Scrafford v. Supervisors, 41/647.

Officers' functions.—The functions of township officers, who are continued by constitutional enactment, are as clearly within the contemplation and protection of the constitution as are the officers themselves, and the legislature has no more power to deprive those officers of their authority and confer that authority upon officers not of local selection than it has to abolish the offices. Davies v. Supervisors, 89/295, 298.

Supervisors.—These officers, who may constitute a county board, are necessary to the organization of a county. People v. Maynard, 15/463, 468. The effect of this section, construed with sec. 7 of art. x, is to limit the power of the legislature to give organized townships more than one representative on the board of supervisors, and imposes the duty to give cities some representation therein. Att'y Gen. v. Preston, 56/177, 180. There is nothing in this section, or in the fact that assessments were made by township supervisors, to justify the inference that the framers of the constitution intended to invest the supervisor with the exclusive power of making assessments. State Tax Com'rs v. Assessors of Grand Rapids, 124/491.

Highway officers.—Highway commissioners are constitutional officers. Burnham v. Township, 46/555, 558. The powers of highway commissioners and overseers are subject to legislative modification, but no legislation can abolish the offices or take away all their functions. The highways in each district must, to some extent at least, be subject to an overseer elected by the people. Hubbard v. Twp. Board, 25/153, 156. [This decision was rendered before the adoption of section 49, art. iv.] By this and other sections of the constitution (art. iv, 23, 38) the control of the highways has been given to townships, and of streets to cities and villages, for all purposes germane to their use. Attorney General v. Pingree, 120/550, 563.

Constables.—No municipal corporation ever existed here or in England without constables or officers answering to constables. They are here and always have been the local peace officers of their vicinage, the ministerial officers of justices of the peace and the bailiffs of courts of record of criminal jurisdiction in the county. Allor v. Wayne Auditors, 43/76, 102, 103. Constables are not such officers in cities and villages as are mentioned in this section and they may be appointed if the legislature should so direct. White v. Supervisors, 105/608; Brandau v. Mayor of Detroit, 115/643, 645.

Body corporate:

(134) SEC. 2. Each organized township shall be a body corporate, with such powers and immunities as shall be prescribed by law. All suits and proceedings by or against a township shall be in the name thereof.

The constitution provides for no municipal subdivisions smaller than towns, except cities and villages. The school district is recognized by the constitution, but its officers are provided for by the legislature. Belles v. Burr, 76/1, 11.

ARTICLE XII.

IMPEACHMENTS AND REMOVALS FROM OFFICE.

Power of impeachment:

(135) SECTION 1. The house of representatives shall have the sole power of impeaching civil officers for corrupt conduct in office, or for crimes or misdemeanors; but a majority of the members elected shall be necessary to direct an impeachment.

Trial by senate:

(136) SEC. 2. Every impeachment shall be tried by the senate. When the governor or lieutenant governor is tried, the chief justice of the supreme court shall preside. When an impeachment is directed, the senate shall take an oath or affirmation truly and impartially to try and determine the same according to the evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. Judgment in case of impeachment shall not extend further than removal from office, but the party convicted shall be liable to punishment according to law.

Prosecution of impeachment:

(137) SEC. 3. When an impeachment is directed, the house of representatives shall elect from their own body three members, whose duty it shall be to prosecute such impeachment. No impeachment shall be tried until the final adjournment of the legislature, when the senate shall proceed to try the same.

Suspension during impeachment:

(138) SEC. 4. No judicial officer shall exercise his office after an impeachment is directed until he is acquitted.

Provisional filling of vacancy:

(139) SEC. 5. The governor may make a provisional appointment to fill a vacancy occasioned by the suspension of an officer, until he shall be acquitted or until after the election and qualification of a successor.

Removal of judge:

(140) SEC. 6. For reasonable cause, which shall not be sufficient ground for the impeachment of a judge, the governor shall remove him on a concurrent resolution of two-thirds of the members elected to each house of the legislature; but the cause for which such removal is required shall be stated at length in such resolution.

Removal of local officers:

(141) SEC. 7. The legislature shall provide by law for the removal of any officer elected by a county, township or school district, in such manner and for such cause as to them shall seem just and proper.

C. L. 1159, authorizing the governor in certain cases to remove officers chosen by the electors of cities and villages is valid under this section and section 13, art. 15. Attorney General v. Detroit Common Council, 112/145. But this section has no application to the office of constable in cities and villages. Brandau v. Mayor of Detroit, 115/643.

Removal of state officers:

(142) SEC. 8. The governor shall have power and it shall be his duty, except at such time as the legislature may be in session, to examine into the condition and administration of any public office and the acts of any public officer, elective or appointed, to remove from office for gross neglect of duty or for corrupt conduct in office, or any other misfeasance or malfeasance therein, either of the following state officers, to wit: The attorney general, state treasurer, commissioner of the land office, secretary of state, auditor general

superintendent of public instruction or members of the state board of education, or any other officers of the state except legislative and judicial, elective or appointed, and to appoint a successor for the remainder of their respective unexpired term of office, and report the causes of such removal to the legislature at its next session.

Amendment of 1861–62. This was a new section added to the article.
The nature and extent of the powers conferred upon the governor by this section are discussed in Dullam v. Willson, 53/392; People v. Therrien, 80/187, 190; Fuller v. Att'y Gen., 98/96, 98; Att'y Gen. v. Jochim, 99/358.

ARTICLE XIII.

EDUCATION.

Superintendent of public instruction:

(143) SECTION. 1. The superintendent of public instruction shall have the general supervision of public instruction, and his duties shall be prescribed by law.

Educational funds:

(144) SEC. 2. The proceeds from the sales of all lands that have been or hereafter may be granted by the United States to the state for educational purposes, and the proceeds of all lands or other property given by individuals or appropriated by the state for like purposes, shall be and remain a perpetual fund, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and annually applied to the specific objects of the original gift, grant or appropriation.

The act of 1857, setting apart seventy-five per cent of the proceeds of swamp lands for the primary school fund, did not constitute such an appropriation of the lands to educational purposes as placed them, under this section, beyond legislative control. People v. Auditor General, 12/171. The provision that the interest and income of the primary school fund shall be appropriated annually to the specific objects of the original grant or appropriation had nothing more in view than the periodical application of such income to its proper and legitimate purposes. It does not take from the legislature the power of regulating from time to time the state policy regarding the primary school lands. Jones v. Land Commissioner, 21/236, 241. This section does not, under the clause "or appropriated by the state for like purposes," make provision in reference to escheated lands. These, so far as they are provided for at all, come within the special provisions of the next section. Crane v. Reeder, 22/322, 337.

Escheats:

(145) SEC. 3. All lands the titles to which shall fail from a defect of heirs, shall escheat to the state, and the interest on the clear proceeds from the sales thereof shall be appropriated exclusively to the support of primary schools.

As to escheated lands, see case last cited in notes to preceding section.

Primary school system:

(146) SEC. 4. The legislature shall, within five years from the adoption of this constitution, provide for and establish a system of primary schools, whereby a school shall be kept without charge for tuition at least three months in each year in every school district in the state, and all instruction in said school shall be conducted in the English language.

Review of Michigan's educational policy from 1817 until after the adoption of this constitution. Stuart v. School Dist., 30/69.
Primary school system.—The authority granted by the constitution to the legislature to establish a common or primary school system carried with it the authority to prescribe what officers should be chosen to conduct the affairs of the school districts, to define their powers and duties, their term of office, and how and by whom they should be chosen. Belles v. Burr, 76/1, 11; Perrizo v. Kesler, 93/280, 283; People v. Howlett, 94/165, 168.
School districts.—Are municipal corporations. School Dist. v. Gage, 39/484; Seeley v. Board of Education, 39/486. They preceded the constitution. Stuart v. Sch. Dist. 30/69. They are recognized by the constitution, but their officers are not. The latter are chosen pursuant to the system adopted by the legislature and cannot be considered constitutional officers. Belles v. Burr, 76/1, 11. School districts are state agencies, created by the legislature, and the management of their local affairs must be in conformity to such laws of a general character as may from time to time be enacted. Attorney General v. Lowrey, 131/639.
English language.—This provision does not prohibit the teaching of other languages. Stuart v. School Dist., 30/83. This provision that instruction shall be conducted in the English language and

the provision relative to three months' school, in the next section, are the only constitutional restrictions upon the authority of the legislature to establish a primary school system. Perrizo v. Kesler, 93/280, 283; Pingree v. Board of Education, 99/404, 408.

District schools:

(147) SEC. 5. A school shall be maintained in each school district at least three months in each year. Any school district neglecting to maintain such school shall be deprived, for the ensuing year, of its proportion of the income of the primary school fund and of all funds arising from taxes for the support of schools.

This provision as to three months' school in the year and that as to the English language in the preceding section, are the only constitutional restrictions upon the legislative authority to establish a primary school system. Perrizo v. Kesler, 93/280, 283; Pingree v. Board of Education, 99/404, 408. A school district, which, during the eight months which elapsed since its organization, had no school, was not entitled to share in an apportionment of interest moneys made during that period. Deckerville School Dist. v. Dist. No. 3, 131/272.

Board of regents of university:

(148) SEC. 6. There shall be elected in the year eighteen hundred and sixty-three, at the time of the election of a justice of the supreme court, eight regents of the university, two of whom shall hold their office for two years, two for four years, two for six years and two for eight years. They shall enter upon the duties of their office on the first of January next succeeding their election. At every regular election of a justice of the supreme court thereafter there shall be elected two regents whose term of office shall be eight years. When a vacancy shall occur in the office of regent, it shall be filled by appointment of the governor. The regents thus elected shall constitute the board of regents of the university of Michigan.

Amendment of 1861–62. As at first adopted this section provided for the election of one regent in each judicial circuit, at the time of the election of judge.

Body corporate:

(149) SEC. 7. The regents of the university and their successors in office shall continue to constitute the body corporate, known by the name and title of "The Regents of the University of Michigan."

Organization and powers of board of regents:

(150) SEC. 8. The regents of the university shall, at their first annual meeting, or as soon thereafter as may be, elect a president of the university, who shall be *ex officio* a member of their board, with the privilege of speaking but not of voting. He shall preside at the meetings of the regents and be the principal executive officer of the university. The board of regents shall have the general supervision of the university, and the direction and control of all expenditures from the university interest fund.

Regents and university.—The financial and all other interests of the university are committed to the supervision of the board of regents. People v. Regents, 4/98, 104; Weinberg v. Regents, 97/254; Sterling v. Regents, 110/369. They are the successors of the "Trustees of the University of Michigan" created by the act of April 30, 1821. Regents v. Detroit Board of Ed., 4/213; Regents v. Detroit Y. M. Soc., 12/138, 159; Grand Rapids v. Hydraulic Co., 66/606, 613. They have the power to take, hold and convey real estate for any purposes tending to promote the interests of the university. Regents v. Detroit Y. M. Soc., 12/138. As to their power to locate a department of the university elsewhere than at Ann Arbor, see People v. Aud. Gen., 17/161. As to legislative control over the board, see People v. Regents, 4/104; 18/469; Att'y Gen. v. Regents, 30/473; Weinberg v. Regents, 97/254; Sterling v. Regents, 110/369. The property held by the regents in their corporate capacity is the public property of the state, held by the corporation in trust for the purposes to which it was devoted, and is exempt from taxation. Aud. Gen. v. Regents, 83/467, 469; Weinberg v. Regents, 97/254. Under the constitution the state cannot control the action of the regents. It cannot add to or take away from its property without the consent of the regents. In making appropriations for its support, the legislature may attach any conditions it may deem expedient and wise, and the regents cannot receive the appropriation without complying with the conditions. But when the state appropriates money to the university, it passes to the regents and becomes the property of the university, to be expended under the exclusive direction of the regents, and passes beyond the control of the state through its legislative department. Weinberg v. Regents, 97/254. The regents are not included in the terms of act 45, of 1885, providing for the taking of security of contractors on public buildings, etc. Weinberg v. Regents, 97/246.

Board of education; organization; duties:

(151) SEC. 9. There shall be elected at the general election in the year one

thousand eight hundred and fifty-two three members of a state board of education; one for two years, one for four years, and one for six years; and at each succeeding biennial election there shall be elected one member of such board, who shall hold his office for six years. The superintendent of public instruction shall be *ex officio* a member and secretary of such board. The board shall have the general supervision of the state normal school, and their duties shall be prescribed by law.

Charitable institutions:

(152) SEC. 10. Institutions for the benefit of those inhabitants who are deaf, dumb, blind, or insane shall always be fostered and supported.

Agricultural school:

(153) SEC. 11. The legislature shall encourage the promotion of intellectual, scientific and agricultural improvements; and shall, as soon as practicable, provide for the establishment of an agricultural school. The legislature may appropriate the twenty-two sections of salt spring lands now unappropriated, or the money arising from the sale of the same, where such lands have been already sold, and any land which may hereafter be granted or appropriated for such purpose for the support and maintenance of such school, and may make the same a branch of the university, for instruction in agriculture and the natural sciences connected therewith, and place the same under the supervision of the regents of the university.

School libraries:

(154) SEC. 12. The legislature shall also provide for the establishment of at least one library in each township and city, and all fines assessed and collected in the several counties and townships for any breach of the penal laws shall be exclusively applied to the support of such libraries, unless otherwise ordered by the township board of any township or the board of education of any city: *Provided,* That in no case shall such fines be used for other than library or school purposes.

Amendment of 1879–81. The amendment consisted of the insertion of the words "and city" after the words "each township" and of the addition, to the end of the section, of all that part beginning with the word "unless."

Since the amendment, even if there had been any ambiguity before, the city boards of education are as distinctly recognized constitutional bodies as any other elective bodies. Belles v. Burr, 76/1, 28.

The penal laws referred to in the constitution are the laws of the state. Fennell v. Com. Coun. of Bay City, 36/186, 190. A city ordinance which punishes by fine and imprisonment the commission of acts which are breaches of law, wherever committed, is a penal law in the sense of the constitution. Wayne Co. v. Detroit, 17/390, 399; People v. Detroit Controller, 18/445. No deduction for expenses or otherwise, can be made. The whole amount collected for fines belongs to the library fund and no portion can be applied elsewhere [except as provided by the amendment of 1881]. People v. Wayne Co. Treasurer, 8/392, 393. As to fines for the violation of mere municipal ordinances, compare People v. Jackson, 8/110; People v. Wayne Co. Treasurer, 8/392; Mixer v. Manistee Supervisors, 26/422; Fennell v. Bay City Com. Coun., 36/186. By the two terms, counties and townships, the people meant to include, and have included, all the municipal divisions of the state. Wayne Co. v. Detroit, 17/390, 401.

ARTICLE XIV.

FINANCE AND TAXATION.

Disposition of specific taxes; annual tax:

(155) SECTION 1. All specific state taxes, except those received from the mining companies of the upper peninsula, shall be applied in paying the interest upon the primary school, university and other educational funds and the interest and principal of the state debt in the order therein recited, until the extinguishment of the state debt, other than the amounts due to educational funds, when such specific taxes shall be added to, and constitute a part of the primary school interest fund. The legislature shall provide for an annual tax, sufficient with other resources, to pay the estimated expenses of the state

government, the interest of the state debt, and such deficiency as may occur in the resources.

The special enumeration of powers in article xiv do not exclude all others that might be implied and the maxims expressio unius est exclusio alterius and expressum facit cessare tacitum, do not apply in the interpretation of the constitution. Williams v. Mayor, 2/560, 563. A tax in the view of this division of the constitution is a burden, charge or imposition for public uses. Van Horn v. People, 46/183, 185; People v. Salem, 20/452, 474. In Aud. Gen. v. State Treasurer, 45/161, it was held that, for the purposes of this requirement of the constitution, the debt was to be considered "extinguished" when there was money enough in the state treasury, not subject to other claims, to pay it, even though it had not matured and had not been actually paid.

Specific taxes.—The state pays interest annually on the educational funds out of the specific taxes. Regents of University v. Auditor General, 109/134, 135. The provisions as to the application of specific taxes are mandatory and the legislature has no power to place the moneys arising from such taxes into any other fund than those designated. Chambe v. Judge of Probate, 100/112, 115; Walcott v. People, 17/68, 77; Youngblood v. Sexton, 32/406. Under the provision requiring all specific taxes to be applied in paying the interest on the primary school fund, etc., the legislature cannot provide for the payment of fees, expenses and cost of litigation in collection out of the tax collected. Union Trust Co. v. Probate Judge, 125/487. The legislature may impose other specific taxes than those mentioned in the constitution. Walcott v. People, 17/68. The tax required by act 168 of 1881 to be paid by telegraph and telephone companies, in lieu of all other taxes, being a tax levied upon an assessment of such lines at their true cash value, is an *ad valorem*, not a specific tax. Pingree v. Auditor General, 120/95. Specific taxes, although assessed and collected under general laws, if applied to local uses, are not state taxes, and do not come under the provisions of this section. Youngblood v. Sexton, 32/406. Teachers' institute fees are not specific taxes. Hammond v. Muskegon Sch. Bd., 109/676.

Sinking fund:

(156) SEC. 2. The legislature shall provide by law a sinking fund of at least twenty thousand dollars a year, to commence in eighteen hundred and fifty-two, with compound interest at the rate of six per cent per annum and an annual increase of at least five per cent to be applied solely to the payment and extinguishment of the principal of the state debt, other than the amounts due to educational funds, and shall be continued until the extinguishment thereof. The unfunded debt shall not be funded or redeemed at a value exceeding that established by law in one thousand eight hundred and forty-eight.

There is no sinking fund raised now, owing to the extinguishment of the principal of the state debt, other than the amounts due to the educational funds.

Debts to meet revenue deficits:

(157) SEC. 3. The state may contract debts to meet deficits in revenue. Such debts shall not in the aggregate at any one time exceed fifty thousand dollars. The moneys so raised shall be applied to the purposes for which they were obtained, or to the payment of debts so contracted.

Debts to repel invasion, suppress insurrection and for defense:

(158) SEC. 4. The state may contract debts to repel invasion, suppress insurrection, or defend the state in time of war. The money arising from the contracting of such debts shall be applied to the purposes for which it was raised, or to repay such debts.

Payment only of appropriations:

(159) SEC. 5. No money shall be paid out of the treasury except in pursuance of appropriations made by law.

Money is "in the treasury" whenever or wherever it is in the official custody of the treasurer, or subject to his direction and control. People v. McKinney, 10/54, 88. When an appropriation is made payable out of a particular fund, if the fund has become exhausted, the auditor general would not be warranted in drawing an order upon that fund. Smith v. Aud. Gen., 80/205, 216.

Loan of state credit prohibited:

(160) SEC. 6. The credit of the state shall not be granted to, or in aid of, any person, association or corporation.

In view of the state's bitter experience with works of internal improvement and a large debt contracted therefor in a time of inflation and imagined prosperity, the provisions of this and the three sections immediately following were incorporated into the constitution, as precautions against injudicious action by themselves, if, in another time of inflation and excitement, they should be tempted to incur the like burdensome taxation, in order to accomplish public improvements in cases where they were not content to await the result of private enterprise. Bay City v. State Treasurer, 23/499, 504, 505.

Issue of scrip, etc., prohibited:

(161) SEC. 7. No scrip, certificate, or other evidence of state indebtedness shall be issued, except for the redemption of stock previously issued, or for such debts as are expressly authorized in this constitution.

Stock subscriptions by state prohibited:

(162) SEC. 8. The state shall not subscribe to, or be interested in, the stock of any company, association or corporation.

Internal improvements:

(163) SEC. 9. The state shall not be a party to, nor interested in, any work of internal improvement, nor engaged in carrying on any such work, except in the improvement of or aiding in the improvement of the public wagon roads and in the expenditure of grants to the state of land or other property: *Provided, however,* That the legislature of the state, by appropriate legislation, may authorize the city of Grand Rapids to issue its bonds for the improvement of Grand river.

Amendment of 1895. The amendment added the exception as to the improvement of wagon roads. The amendment of 1893 added the proviso.

Internal improvements.—The settled policy of this state is now against the improvement of highways for trade and commerce by taxation of the people. Benjamin v. Manistee River Imp. Co., 42/628. The constitution does not permit the state either to contract a debt for a public improvement, to expend in its construction anything but the grants which it has received for the purpose; and any legislation which attempts any other expenditure must be directly within the constitutional inhibition and therefore void. Ryerson v. Utley, 16/269, 275; Hubbard v. Twp. Bd., 25/153, 155. The question whether the work is carried on by the state in no way depends on the sources from which the money is drawn to pay for it. It is a state work if directed, planned and executed by state agency. Hubbard v. Twp. Board, 25/153, 155. The state may authorize the improvement of its natural highways by water, but it is precluded by this section of the constitution from doing so itself. Watts v. Tittabawassee Boom Co., 52/203, 211; Manistee River Imp. Co. v. Sands, 53/593. Nor can the legislature impose a tax upon a particular locality for internal improvements. Anderson v. Hill, 54/478, 487; Sparrow v. Land Com'r, 56/567; Wilcox v. Paddock, 65/23, 29. The construction of a railroad is an internal improvement within the meaning of this section. Attorney General v. Pingree, 120/550, 560; People v. State Treasurer, 23/499. What the state cannot do, it cannot authorize the townships and cities to do. Id. An act for the acquirement by a city of a system of street railways, partly within and partly without the corporate limits, to be maintained and operated by the city, is repugnant to this provision. Attorney General v. Pingree, 120/550. Act 423 of 1897, appropriating certain homestead tax lands for the improvement of Maple river, and providing for a tax therefor if the lands proved inadequate, is repugnant to this section. Gibson v. Com'r of St. Land Office, 121/49. But the drain law of 1885 is not in violation of this section, the work authorized thereby being one of local improvement for the benefit of public health, to be paid for by the townships and persons to be benefited, which has always been held proper under our constitution. Gillett v. McLaughlin, 69/547, 551; Smith v. Carlow, 114/67; Attorney General v. McClear, 121/45.

Specific taxes; assessment of corporate property; board of assessors:

(164) SEC. 10. The state may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from corporations. The legislature may provide for the assessment of the property of corporations, at its true cash value by a state board of assessors and for the levying and collection of taxes thereon. All taxes hereafter levied on the property of such classes of corporations as are paying specific taxes under laws in force on November sixth, A. D. nineteen hundred, shall be applied as provided for specific state taxes in section one of this article.

Amendment of 1900. As at first adopted the section consisted of the first two sentences above, except that instead of the word "corporations" at the end of the second sentence, it read, "banking, railroad, plank road and other corporations hereafter created."

Specific taxes.—The express powers given by this section do not restrict the right of specific taxation to the cases named. Walcott v. People, 17/68. As to local specific taxes on business or occupation, see Kitson v. Mayor, 26, 325; Youngblood v. Sexton, 32/306. No discrimination can be made by way of specific taxation so as to operate as a tax upon inter-state commerce. Jackson Min. Co. v. Aud. Gen., 32/488. The legislature can fix the amount of the authorized capital stock of a corporation as the basis of computation of a specific tax under this section. Attorney General v. Arnott, 145/416.

Board of assessors.—The board, in determining the average rate of taxation on property throughout the state other than railroad property, with the view to the assessment of the latter, should take as a basis the actual assessed valuation of such other property, as reported to it in accordance with said act, and it has no authority to increase such valuation on the theory that the assessments were too low. Board of Education v. State Assessors, 133/116.

Uniform rule of taxation:

(165) SEC. 11. The legislature shall provide a uniform rule of taxation,

except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: *Provided*, That the legislature shall provide an uniform rule of taxation for such property as shall be assessed by a state board of assessors, and the rate of taxation on such property shall be the rate which the state board of assessors shall ascertain and determine is the average rate levied upon other property upon which *ad valorem* taxes are assessed for state, county, township, school and municipal purposes.

Amendment of 1900. The amendment added the proviso.

Uniform rule.—This rule forbids double taxation. Stroh v. City of Detroit, 131/109. This provision of the constitution does not execute itself; it was not operative until the legislature established a rule in conformity therewith. Williams v. Mayor, 2/560, 565; Motz v. Detroit, 18/495, 517. As to the meaning of this requirement, compare Williams v. Mayor, 2/560; Sears v. Cottrell, 5/251, 262; People v. Aud. Gen., 7/84, 90; Woodbridge v. Detroit, 8/274; Chilvers v. People, 11/43, 50; Motz v. Detroit, 18/495, 516; Jones v. Water Com'rs, 34/273, 276; Detroit v. Daly, 68/503, 508; Att'y Gen. v. Supervisors, 71/16, 20, 26; Wilcox v. Township, 81/271, 274; Detroit Com. Coun. v. Assessors, 91/78, 118; Manistee Lumb. Co. v. Township, 92/277, 279; Standard Ins. Co. v. Assessors, 95/466, 468; Chambe v. Prob. Judge, 100/114. A tax on property at a valuation fixed by assessors must conform to the rule of uniformity, since it cannot be considered a specific tax. Union Trust Co. v. Wayne Probate Judge, 125/487. A discrimination against shares of stock in foreign corporations, for purposes of taxation, is not obnoxious to this provision, since the legislature can place domestic and foreign corporations in different classes for the purpose of taxation. Bacon v. Board of State Tax Com'rs 126/22. The rate of taxation on telegraph and telephone lines provided by act 168 of 1881—being the average rate of all general, municipal and local taxes levied throughout the state during the previous year—is determined in a different way and is different in amount, from that imposed upon other property, and is therefore not uniform. Pingree v. Auditor General, 120/95. The statutory provisions for the taxation of insurance companies do not violate the constitutional requirement of uniformity. Mich. Mut. Life Ins. Co. v. Hartz, 129/104. The proviso of C. L. 3834, to the effect that the personal property of navigation companies shall be assessed only where their general business office is located by their articles of association, attempts to confer the privilege of fixing the situs of their property for purposes of taxation, and violates the rule of uniformity. Transportation Co. v. Detroit Assessors, 139/1; City of Detroit v. Transportation Co., 140/174. So far as act 282 of 1905 undertakes to repose in the board of assessors the right to ascertain and determine, from other sources than the assessments actually made, the amount at which the property of the state should be assessed, and to use such estimate in ascertaining the rate of tax to be assessed, it is in conflict with the rule of uniformity. Attorney General v. State Board of Assessors, 143/73.

Subjects of taxation.—The legislature may prescribe the subjects of taxation. People v. Aud. Gen. 7/84, 90; Graham v. Township, 67/652, 656. The power of the state to exempt from taxation for a limited period lands granted in aid of the construction of railroads is not an open question. Supervisors v. Aud. Gen., 65/408, 411; People v. Aud. Gen., 7/84; People v. Aud. Gen., 9/134. As to perpetual exemption, see East Saginaw Mfg. Co. v. East Saginaw, 19/259. As to the taxation of business or occupation under this and the next section, see Walcott v. People, 17/68; Kitson v. Mayor, 26/325; Youngblood v. Sexton, 32/306. The power of the legislature over the subject of taxation is plenary. Att'y Gen. v. Supervisors, 71/16, 26. The sovereign powers of taxation and of police reside together and are capable of harmonious employment to effect the ends of good government. Reithmiller v. People, 44/280, 285. The taxation of dogs is not strictly a tax within the meaning of this article, but is an exercise of the police power of the state. Van Horn v. People, 46/183, 185.

Assessments at cash value:

(166) SEC. 12. All assessments hereafter authorized shall be on property at its cash value.

There is no inharmony between amended section 11 and this section. Attorney General v. State Board of Assessors, 143/73, 78.

Cash value.—This provision is as much designed for securing against over-valuation as under-valuation. Avery v. East Saginaw, 44/587, 589. It does not permit an assessment on any other basis than actual value; and a charter provision that wild and unimproved lands shall be assessed at their true cash value considering the location, and not according to any prospective or supposed value of such lands as city property is invalid. Saltonstall v. Board of Review, 132/196.

State board of equalization:

(167) SEC. 13. In the year one thousand nine hundred and one, and every fifth year thereafter, and at such other times as the legislature may direct, the legislature shall provide for an equalization of assessments by a state board, on all taxable property, except that taxed under laws passed pursuant to section ten of this article.

Amendment of 1900. As at first adopted this section reads as follows: "The legislature shall provide for an equalization by a state board in the year one thousand eight hundred and fifty-one, and every fifth year thereafter, of assessments on all taxable property except that paying specific taxes."

Object of tax to be stated:

(168) SEC. 14. Every law which imposes, continues or revives a tax shall distinctly state the tax, and the objects to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

This section was evidently borrowed from an amendment to the constitution of 1835. Its intent is manifest, to prevent the legislature from being deceived in regard to any measure for levying taxes,

and from furnishing money that might by some indirection be used for objects not approved by the legislature. Westinghausen v. People, 44/265, 267. But there is nothing in the language employed in this section which would warrant the holding that every law providing for a tax is invalid, unless it limits in amount the sum to be levied. People v. Mahaney, 13/481, 499. Where the application of the tax is distinctly made by the constitution, as in the case of specific taxes, and cannot be altered by the legislature, it is not necessary that this should be done in the act itself. Walcott v. People, 17/68. A direction that the tax be placed to the credit of the contingent fund is specific enough. Westinghausen v. People, 44/265, 267. Act 124 of 1883, authorizing cities and villages to take private property for public use or benefit, states both the tax and the object and does not conflict with this provision. Trowbridge v. Detroit, 99/443. The inheritance tax law (act 188 of 1899) is not obnoxious to this section. Union Trust Co. v. Probate Judge, 125/487.

ARTICLE XV.

CORPORATIONS.

Formation; bank with branches:

(169) SECTION 1. Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed. But the legislature may, by a vote of two-thirds of the members elected to each house, create a single bank with branches.

Amendment of 1861–62. The amendment consisted in the addition of the last clause.

Corporations.—A corporation is the creature of the sovereign will. State Treas. v. Aud. Gen. 46/224; 234; C. & N. W. Ry. Co. v. Aud. Gen., 53/79, 91. It has its existence and domicile, so far as the term can be applicable to the artificial person, within the territory of the sovereignty creating it. C. & N. W. Ry. Co. v. Aud. Gen., 53/79, 91. If two states should incorporate the same persons for the same purpose, with identical powers, there would in contemplation of law be two corporations deriving their authority from different sources. State Treas. v. Aud. Gen., 46/224, 234; C. & N. W. Ry. Co. v. Aud. Gen., 53/79, 91. When one sovereignty creates a corporation, it can operate within the limits of another only by the express permission of the latter, or by implied permission springing from principles of comity. State Treas. v. Aud. Gen., 46/224, 234.

Power to create.—The power to create corporations, like that of eminent domain, needed no constitutional provision to confer it upon the legislature. A restriction was placed upon the exercise of each, but these restrictions are to be measured by a reasonable construction. Woodmere Cemetery v. Roulo, 104/595, 601. Were it not restricted by the constitution the legislature would have the undoubted right to grant such special acts of incorporation as it saw fit. Mason v. Perkins, 73/303, 318.

General laws.—Only under general laws can private corporations be created in Michigan. Citizens' St. R. Co. v. Common Council, 125/673. But this provision does not preclude the legislature from passing special laws authorizing a municipality to impose specific taxes upon corporations so created, according to the particular circumstances attending each. Citizens' St. R. Co. v. Common Council, 125/673. The great purpose of this provision was to introduce a system of legislation in regard to the institution of corporations, which should exclude the corruption and party favoritism which had too often accompanied the method previously in vogue, and to secure as far as practicable for all the people of the state an equality of opportunity and a guard against sectional discriminations. Nelson v. McArthur, 38/204, 207; Wellman v. Railway Co., 83/592, 601. This provision does not require that all laws creating corporations not municipal shall be so framed as to expressly authorize the corporations in all cases to conduct their operations anywhere in the territory of the state. But such operations may be confined by the law within a given section, when they cannot be carried elsewhere. Nelson v. McArthur, 38/204, 207, 208. The general law, together with the articles of association adopted, sometimes called "constating instruments," constitute the charter of the corporation. Mason v. Perkins, 73/303, 320.

Uniformity of organization.—This provision certainly contemplates a uniform rule adopted by law for organizing corporations. Isle Royale Corp. v. Osmun, 76/162, 167. The purpose has always been understood as meant to put all corporations for similar purposes under the same conditions as to organization, powers and privileges. Id. The legislature cannot by general act confer upon one corporation rights which, under precisely similar circumstances, it denies to another, or greater rights and privileges upon one than are conferred upon another. Stimson v. Booming Co., 100/347, 351.

Validity of incorporation.—Valid only when strictly conforming to the conditions of the general law. Doyle v. Mizner, 42/332, 337. Acts authorizing corporations of one kind to organize under laws providing for corporations of a different kind are objectionable as tending to mislead and confuse. Mok v. Detroit B. & S. Assn., 30/511; Burton v. Schildbach, 45/504, 507; Isle Royale Corp. v Osmun, 76/162, 166. No corporation in this state can exist unless it be created by law. Mason v. Perkins, 73/303, 312; Isle Royale Corp. v. Osmun, 76/162, 167.

Right of amendment.—The power reserved to amend or alter the charters of corporations authorizes any reasonable amendment, regulating the mode in which the franchise granted shall be used and enjoyed, which does not defeat or essentially impair the object of the grant, or take away property or rights which have become vested under a legitimate exercise of the powers granted. Attorney General v. Looker, 111/498; Smith v. L. S. & M. S. Ry. Co., 114/460, 473; Mason v. Perkins, 73/303, 318. But for the provision in the federal constitution against the impairment of contracts, the power to amend and repeal corporate charters would be ample without being expressly reserved. The reservation of the right leaves the state where any sovereignty would be if unrestrained by express constitutional limitations and with the powers it would then possess. Smith v. L. S. & M. S. Ry. Co., 114/460, 473; City of Detroit v. Plank Road Co., 43/140. The minority representation act of 1885 is valid, under this reserved right of amendment, as to corporations organized under earlier acts. Att'y Gen. v. Looker, 111/498.

Banking law:

(170) SEC. 2. No general banking law shall have effect until the same

shall, after its passage, be submitted to a vote of the electors of the state at a general election and be approved by a majority of the votes cast thereon at such election.

Amendment of 1861–62. The amendment consisted in dropping out the words "or law for banking purposes, or amendments thereof," which stood immediately after the words "banking law" in the section as originally adopted, and inserting the word "general" before the words "banking law," thus doing away with the necessity of submitting to the people amendments to the banking law.

By this plain provision the electors of the state expressly reserved to themselves the right to legislate collectively on that one specified subject. People v. Collins, 3/360, 373.

Stockholders' liability:

(171) SEC. 3. The officers and stockholders of every corporation or association for banking purposes, issuing bank notes or paper credits to circulate as money, shall be individually liable for all debts contracted during the term of their being officers or stockholders of such corporation or association, equally and ratably to the extent of their respective shares of stock in any such corporation or association.

Amendment of 1859–60. The amendment consisted in the addition to the section of the clause beginning with the words "equally and ratably."

This provision relates to the banks of issue only. Foster v. Row, 120/1, 11.

Registry of bank bills and notes:

(172) SEC. 4. For all banks organized under general laws, the legislature shall provide for the registry of all bills or notes issued or put in circulation as money, and shall require security to the full amount of notes and bills so registered, in state or United States stocks bearing interest, which shall be deposited with the state treasurer for the redemption of such bills or notes in specie.

Amendment of 1861–62. The amendment consisted in adding to the section the phrase, "for all banks organized under general laws," and omitting the words "by law," after the words "provide."

Billholders preferred creditors:

(173) SEC. 5. In case of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

Suspension of specie payments:

(174) SEC. 6. The legislature shall pass no law authorizing or sanctioning the suspension of specie payments by any person, association or corporation.

Liability for labor performed:

(175) SEC. 7. The stockholders of all corporations and joint stock associations shall be individually liable for all labor performed for such corporation or association.

Nature of liability.—The constitution by making stockholders "individually liable" for labor debts does not thereby necessarily make them primarily liable. Hanson v. Donkersley, 37/184, 187. The liability is collateral and secondary. Peck v. Miller, 39/594, 597; Arno v. Judge, 42/362, 367; Milroy v. Spurr Mountain Iron Co., 43/231, 238. It means a liability beyond that of members of a corporation and has no reference to a mere separate or several one. Milroy v. Spurr Mountain Iron Co., 43/231, 238.

For labor performed.—The constitution evidently intended to protect those persons who most needed protection and who would be most likely to suffer without it. Brockway v. Innes, 39/47, 48; Peck v. Miller, 39/594, 597. An assistant chief engineer of a railroad coompany is not a laborer within the meaning of this provision. Brockway v. Innes, 39/47, 48. Nor is a contractor. Peck v. Miller, 39/594, 599; Taylor v. Manwaring, 48/171. Nor a traveling salesman. Jones v. Avery, 50/326. The cases last cited are reviewed in Black's Appeal, 83/513.

Amendment of incorporation acts; renewal or extension:

(176) SEC. 8. The legislature shall pass no law altering or amending any act of incorporation heretofore granted, without the assent of two-thirds of the members elected to each house; nor shall any such act be renewed or extended. This restriction shall not apply to municipal corporations.

Amendment.—Such amendments cannot be made by implication. An amendment or repeal of a charter must refer to it. Grand Rapids v. Hydraulic Co., 66/606, 610. But a special act, author-

izing a plank road company to mortgage its road, is to be regarded as an amendment of the company's charter. Joy v. J. & M. P. R. Co., 11/155.

Two-thirds vote.—An act, purporting to amend a railroad charter, which lacked one of the necessary two-thirds vote for its passage, had been recognized as valid for nearly twenty years and had been made the basis of other acts before the fact was discovered, and it was held that it had received sufficient legislative recognition to cure its original invalidity if any existed. Attorney General v. Joy, 55/94.

Renewal or extension.—This provision in connection with section 10 of this article, fixing the limit of corporate existence at 30 years, was designed to fix a limit beyond which private corporations should not continue to exist. Mason v. Perkins, 73/303, 320. An act enabling a railroad company to take a new name and to extend its road is not an act renewing or extending its charter or creating a new corporation. Attorney General v. Joy, 55/94.

Compensation for property taken:

(177) SEC. 9. The property of no person shall be taken by any corporation for public use, without compensation being first made or secured, in such manner as may be prescribed by law.

Compare the provisions of this section with sec. 15 of this article and secs. 2 and 14 of art. xviii. Compare also the citations under these four sections.

As to similar provisions in the constitution of 1835—art. 1, sec. 19—see People v. M. S. R. R. Co., 3/501; Smith v. McAdam et al., 3/506; La Plaisance Bay Harbor Co. v. Monroe, Walk. 167; Paul v. Detroit, 32/114; McRae v. R. R. Co., 93/404. As to the power of the territorial government to take private property for public use, see Swan v. Williams, 2/431.

Private property.—The term "private property" was not intended to include money. Williams v. Mayor, 2/560, 566. The property of a railroad company may be taken, whenever the necessity of the public requires it. Grand Rapids v. Bennett, 106/533–4; Railway Co. v. Railroad Co., 35/265; Railroad Co. v. Railroad Co., 62/564. But the property of a railroad company is as sacredly guarded and as much beyond the reach or power of the legislature as is the property of an individual. G. R., N. & L. S. R. R. Co. v. G. R. & I. R. R. Co., 35/265, 271; People v. L. S. & M. S. Ry. Co., 52/277, 286; People v. Ry. Co. 79/471, 475. The grading of a street in such a manner as to raise an embankment and thereby bury a portion of a dwelling house is a taking of private property. Vanderlip v. Grand Rapids, 73/522, 533. Also flowing lands against the owner's consent. G. R. B. Co. v. Jarvis, 30/308, 320. But the placing of telegraph poles along a public highway is not an additional servitude for which compensation must be made. People v. Eaton, 100/208, 211. The right of a riparian owner's land under the water cannot be taken, or its value lessened or impaired, even for public use, without compensation or without due process of law. Grand Rapids v. Powers, 89/94. A tenant's term is "property" for injury to which he is entitled to compensation. City of Detroit v. C. H. Little Co., 141/637.

Public use.—Private property can be taken only for public use in fact. M., C. & L. M. R. R. Co. v. Clark, 23/519, 524; G. R., N. & L. S. R. R. Co. v. Van Driele, 24/409; East Saginaw v. St. C. R. R. Co. v. Benham, 28/459; Paul v. Detroit, 32/108, 119; Ryerson v. Brown, 35/333; Morgan's Appeal, 39/675, 682; Board of Health v. Van Hoesen, 87/533, 537. Private property can be taken by the state only for state purposes and not for the United States. People v. Trombley, 23/471. The construction of highways is a public use for which private property may be taken. People v. Kimball, 4/95, 96; Truax v. Sterling, 74/160, 165. Also the construction of railroads. Swan v. Williams, 2/427; People v. Salem, 20/452, 512. But not the flowing of lands for water-power mills. Ryerson v. Brown, 35/333. Land can be taken for a legitimate public purpose, even though a private purpose will be thereby incidentally subserved; but in such case the taking must be limited to the public necessity. Berrien Springs W. P. Co. v. Berrien Circuit Judge, 133/48. But it is beyond the power of the legislature to authorize the condemnation of land for the purpose of creating a water power which may be used for public or private purposes at the option of the proprietor. Berrien Springs W. P. Co. v. Berrien Circuit Judge, 133/48.

Compensation.—The compensation must be determined by the jury, as well as the necessity. Compensation must be made in money, for that is the only fixed standard or representation of value known to the law. Williams v. Mayor, 2/560, 566. The owner of land taken for a street is entitled to its full market value. Chaffee's Appeal, 56/244, 256; Detroit v. Daly, 68/512; Detroit v. Chaffee, 68/635; Park Com'rs v. Moesta, 91/151, 154. Compensation for, rather than the value of the land taken, is what the constitution contemplates. Grand Rapids v. G. R. & I. R. R. Co., 58/641, 648. Nothing is just compensation which does not make good all the pecuniary loss or outlay occasioned to the owner by the appropriation of his property. C. & G. T. Ry. Co. v. Hough, 61/507, 508. There is no case where the actual taking of private property is damnum absque injuria. Compensation is a constitutional condition of such taking and it can be lawful only when the necessity of the taking as well as the measure of the compensation has been determined in a legal way. Sheldon v. Kalamazoo, 24/383, 386; Detroit v. Beckman, 34/127; M., H. & O. R. R. Co. v. Probate Judge, 53/217, 226. As to the necessity of making compensation, see also Coleman v. F. & P. M. Ry. Co., 64/164; McKay v. Doty, 63/583; Chaffee's Appeal, 56/262; Ryan v. Brown, 18/196, 211; In re Albers, 113/64. Compensation by street railway companies to owners of abutting property. Taylor v. Street Ry. Co., 80/77. The legislature may provide by law the manner in which the compensation is to be ascertained and determined by the jury. Grand Rapids v. Perkins, 78/93, 96. It has been held that it is not necessary, within this constitutional provision, that the amount of compensation should be actually ascertained and paid before property is thus taken; but it is necessary, even when the property is taken by the state itself, that certain and ample provision should be made by law—except in cases of public emergency—so that the owner can coerce payment without unreasonable delay. People v. M. S. R. R. Co., 3/496, 501. The supreme court, on dismissing a bill by a railway company for specific performance of a contract to convey a right of way, has no power to determine defendant's damages for appropriating the right of way. G. R., G. H. & M. Ry. Co. v. Stevens, 143/646.

Term of incorporation; extension; reorganization:

(178) SEC. 10. No corporation except for municipal purposes or for the construction of railroads, plank roads and canals, shall be created for a longer time than thirty years; but the legislature may provide by general laws, applicable to any corporations, for one or more extensions of the term of such

corporations while such term is running, not exceeding thirty years for each extension, on the consent of not less than a two-thirds majority of the capital of the corporation; and by like general laws for the corporate reorganization for a further period, not exceeding thirty years, of such corporations whose terms have expired by limitation, on the consent of not less than four-fifths of the capital: *Provided,* That in cases of corporations where there is no capital stock, the legislature may provide the manner in which such corporations may be reorganized.

Amendment of 1889. The amendment consisted of the addition of all after the words "thirty years," where they first occur. Without the authority conferred upon the legislature by this amendment, the legislature would have no authority to authorize the extension of corporate existence. Mason v. Perkins, 73/303, 318; Mining Co. v. Sec'y of State, 82/573, 575; Rockwith v. State Road Bridge Co., 145/455.

Municipal purposes.—The word "municipal" has not a well-defined and technical meaning, and must be construed with reference to the evils to be prevented and the purposes to be accomplished, the history of the provision of the constitution in which it is used and the practical construction that has been placed upon it. A county agricultural society comes within this exception. Agricultural Soc. v. Houseman, 81/609, 614.

Plank roads.—The plank road act of 1851 having been amended so as to permit the construction of roads of gravel or broken stone, instead of plank, a company organized thereunder stands as a plank road company and is within this exception. Gravel Road Co. v. Paas, 95/373,380.

Thirty years.—The design of the framers of the constitution was to place all purely private corporations on an equal footing and to fix a limit of time beyond which they should not continue to exist. Mason v. Perkins, 73/303, 321. The evident intent was to prevent the perpetuation of corporate power and wealth. It was intended to apply to private corporations organized for profit and not to those which are public in their character. Agricultural Soc. v. Houseman, 81/609, 614. A manufacturing company organized for less than thirty years may amend its articles of association so as to provide for a term not exceeding the constitutional limit. Elevator Co. v. Sec. of State, 90/466. An act which leaves the term of existence indefinite and to end upon a contingency criticized. Mok v. Detroit B. & S. Assn., 30/511, 524.

Corporations defined; right to sue and be sued:

(179) SEC. 11. The term "corporations," as used in the preceding sections of this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations, not possessed by individuals or partnerships. All corporations shall have the right to sue and be subject to be sued in all courts in like cases as natural persons.

Sec. 18 of art. vi vests a discretion in the legislature in reference to the jurisdiction of justices of the peace and confers the power to exempt municipal corporations from suits before a justice. Root v. Mayor, 3/433, 436; Gurney v. Mayor, 11/202.

Corporate ownership of real estate:

(180) SEC. 12. No corporation shall hold any real estate, hereafter acquired, for a longer period than ten years, except such real estate as shall be actually occupied by such corporation in the exercise of its franchises.

This constitutional provision does not give the right to a mere squatter upon real estate to assert the lapse of title against the corporation, but it can be enforced only at the instance of the public. P. M. R. Co. v. Graham, 136/444. 450.

Cities and villages; restriction of taxation, etc.:

(181) SEC. 13. The legislature shall provide for the incorporation and organization of cities and villages, and shall restrict their powers of taxation, borrowing money, contracting debts, and loaning their credit.

Cities and villages.—The constitution provides for no municipal subdivisions smaller than towns, except cities and villages. Belles v. Burr, 76/1, 11. And their organization by the legislature is required. Attorney General v. Detroit Common Council, 112/145, 159. The legislature directs what the nature of the organization shall be; what officers shall be elected or appointed; their terms of office; their powers, duties and compensation; when vacancies shall exist and how they shall be filled. This power to prescribe is within the scope of the power to organize the municipality. Detroit Common Council v. Schmid, 128/379, 389. Subject to the general restrictions contained in this section, the powers to be granted cities is left to the discretion of the legislature, and that discretion may as well be exercised in an independent statute as in the charter itself. Water Co. v. City of Menominee, 124/386, 395. The constitution has not prescribed the character of the restriction which shall be imposed and, from the nature of the case, it was impossible to do more than to make it the duty of the legislature to set some bounds to a power so liable to abuse. People v. Mahaney, 13/481, 498. A municipal tax levy in excess of such limit is illegal and cannot be sustained. Wattles v. Lapeer 40/624. When the legislature prescribes the limits of financial action, it must be assumed to permit all reasonable and proper expenditures within those limits. Torrent v. Muskegon, 47/115, 120.

Election of judicial officers:

(182) SEC. 14. Judicial officers of cities and villages shall be elected and

all other officers shall be elected or appointed at such time and in such manner as the legislature may direct.

The constitution does not provide, either directly or indirectly, the manner in which city and village officers shall be appointed. Attorney General v. Bolger, 128/355, 361.

The legislature cannot appoint the local officers of cities and villages. People v. Hurlbut, 24/44; Att'y Gen. v. Lothrop, 24/235. Jury commissioners are not judicial officers. People v. Reilly, 53/260. Continuing in office, under a new act, a police judge elected under an old act repealed does not confer a judicial office by legislation, but simply abstains from legislating him out of office. Coon v. Att'y Gen., 42/65. The duties of the Detroit Board of Health are not purely municipal and hence its members may be appointed by the governor. Davock v. Moore, 105/128.

Taking of private property:

(183) SEC. 15. Private property shall not be taken for public improvement in cities and villages without the consent of the owner, unless the compensation therefor shall first be determined by a jury of freeholders and actually paid or secured in the manner provided by law.

Compare this section with sec. 9 of this article and secs. 2 and 14 of art. xviii. Compare also the citations under these four sections.

This section does not dispense with the finding of the necessity of the taking, as provided in sec. 2 of art. xviii. Horton v. Grand Haven, 23/465; Campau v. Detroit, 14/283; People v. Brighton, 20/69; Paul v. Detroit, 32/113. This section and art. xviii, secs. 2, 14, have reference to the taking of specific property for public uses or improvements, like highways, public buildings or drains. They have no reference to taxes levied and collected to pay for such improvements. Roberts v. Smith, 115/5.

Notice of alteration of charter:

(184) SEC. 16. Previous notice of any application for an alteration of the charter of any corporation shall be given in such manner as may be prescribed by law.

The main purpose of this provision was to prevent applications being made for amendments of corporation charters by the corporation itself or interested parties, in such manner as to avoid public scrutiny and discussion, or a fair hearing of any remonstrances against the proposed alteration or amendment. It was designed to prevent imposition upon the legislature and the public, and not to restrain the legislature from making, of its own motion, such amendments or alterations in the charters of municipal corporations as in their opinion the public interests may require. People v. Hurlbut, 24/44, 53.

ARTICLE XVI.

EXEMPTIONS.

Personal property exempt:

(185) SECTION 1. The personal property of every resident of this state, to consist only of such property as shall be designated by law, shall be exempted to the amount of not less than five hundred dollars from sale on execution or other final process of any court, issued for the collection of any debt contracted after the adoption of this constitution.

Each member of a firm may claim this exemption. Skinner v. Shannon, 44/86, 89. Property exempt from execution is also exempt from garnishment at the election of the debtor. Wilson v. Bartholomew, 45/41, 43. A resident of Michigan who removes to a foreign state loses the benefit of exemption as to property found in this state. McHugh v. Curtis, 48/262. The constitution itself speaks upon the question of what debts the exemption shall be good against, and provides that such property as shall be prescribed by the legislature shall be exempt as against all debts—not debts of a particular class—or all debts except a particular class. Burrows v. Brooks, 113/307, 310.

Homestead defined; exemption:

(186) SEC. 2. Every homestead of not exceeding forty acres of land, and the dwelling house thereon, and the appurtenances to be selected by the owner thereof, and not included in any town plat, city or village; or instead thereof, at the option of the owner, any lot in any city, village, or recorded town plat, or such parts of lots as shall be equal thereto, and the dwelling house thereon, and its appurtenances, owned and occupied by any resident of the state, not exceeding in value fifteen hundred dollars, shall be exempt from forced sale on execution, or any other final process from a court, for any debt contracted after the adoption of this constitution. Such exemption shall not extend to any mortgage thereon, lawfully obtained; but such mortgage or other alien-

ation of such land by the owner thereof, if a married man, shall not be valid without the signature of the wife to the same.

Homestead exemption.—It has always been the policy in this state to secure, so far as possible, for every family, a home, which should inure to the benefit of the entire family. Corey v. Waldo, 126/706, 709. The descriptive features of the homestead exempted by the constitution are as follows: (1) It must contain the dwelling house and its appurtenances; (2) It must not exceed the quantity limited by the constitution; (3) It must be owned by the party claiming it;(4) It must be occupied by him as a homestead; (5) It must not exceed in value $1,500. Beecher v. Baldy, 7/488, 501. The exemption can be claimed only in premises actually owned and occupied by the claimant as a homestead. Wisner v. Farnham, 2/472; Chamberlain v. Lyell, 3/458; Herschfeldt v. George, 6/469; Beecher v. Baldy, 7/501; Dyson v. Sheley, 11/528; Coolidge v. Wells, 20/87; Amphlett v. Hibbard, 29/303; Stanton v. Hitchcock, 64/316, 319; Smith v. Kidd, 123/193, 194; Ware v. Hall, 138/70, 72. It is an absolute right and not a mere privilege personal to the owner, and hence creditors cannot complain of a voluntary conveyance by him of the homestead during his last illness, though he left neither wife nor children surviving. Eagle v. Smylie, 126/612. It is the land and not the fee which is exempted. Beecher v. Baldy, 7/501; Drake v. Kinsell, 38/237. The homestead is exempted only as an entirety and not a part of, or an undivided interest in, a homestead Beecher v. Baldy, 7/488, 500; Amphlett v. Hibbard, 39/300; Tharp v. Allen, 46/392; Sherrid v. Southwick, 43/518. The homestead right is not strictly an estate. Robinson v. Baker, 47/622. The character of any property as a homestead depends upon intention, and it may be entirely destroyed by a removal of residence. Stanton v. Hitchcock, 64/316, 320; Smith v. Kidd, 123/193. The fact that the parcel claimed as exempt was formerly owned in severalty does not affect the homestead exemption. Bouchard v. Bourassa, 57/11.

For wife and family.—The homestead exemption is not alone for the husband and his protection, but for the benefit of the wife and children as well. People v. Plumstead, 2/471; Beecher v. Baldy, 7/505, 506; Penniman v. Perce, 9/528; Dye v. Mann, 10/297, 298; McKee v. Wilcox, 11/358, 360; Dyson v. Sheley, 11/527; King v. More, 11/539; Snyder v. People, 26/110; Comstock v. Comstock, 27/97; Showers v. Robinson, 43/502; Sherrid v. Southwick, 43/515; Riggs v. Sterling, 60/643, 650; Stanton v. Hitchcock, 64/319. The wife has an absolute and vested interest in the homestead which her husband has no power to discharge or affect. Penniman v. Perce, 9/528; Mertz v. Berry, 101/37. Where a wife has once had her home with her husband in his dwelling he cannot deprive her of that vested right by driving her out. Sherrid v. Southwick, 43/519; Stanton v. Hitchcock, 64/316, 320. As to homestead and dower rights in the same land, see Dei v. Habel 41/88; Showers v. Robinson, 43/511.

What it may be claimed in.—Land held under a contract to purchase. McKee v. Wilcox, 11/358, 361; Lozo v. Sutherland, 37/171. Land held on a part paid school land certificate. Allen v. Cadwell, 55/10. Premises in which the husband has only an equitable interest. Orr v. Shraft, 22/260; Lozo v. Sutherland, 38/171. A building standing on the land owned by another. Bunker v. Paquette, 37/79. Land in possession of a tenant in common claiming his interest in fee. Cleaver v. Bigelow, 61/47, 53. Lands held in common with others. Lozo v. Sutherland, 37/168, 174; Sherrid v. Southwick, 43/518. But not in lands merely intended for a future home. Coolidge v. Wells, 20/87; Sherrid v. Southwick, 43/518; Ware v. Hall 138/70. The constitution in giving a homestead as a right does not confine it to any particular estate or interest whatever in the land. McKee v. Wilcox, 11/358, 360.

Selection of homestead.—Ownership and occupancy alone are evidence of selection, if the tract is within the constitutional quantity and value. Beecher v. Baldy, 7/488, 504; Thomas v. Dodge, 8/51, 55; Riggs v. Sterling, 60/650. The constitution contemplates a selection only when it is necessary to bring the homestead within the limitation as to quantity and value; but it need not be in writing. Beecher v. Baldy, 7/506. The exemption must be claimed and the value ascertained at the time of the levy, or at least after it and before sale. Herschfeldt v. George, 6/468; Riggs v. Sterling, 60/651.

Owner.—The word "owner" in this connection has generally been treated as including all parties who had a claim or interest in the property. Lozo v. Sutherland, 38/171.

City or village lot.—In unplatted farm land, though within village limits, the homestead exemption is not limited to the equivalent of a town lot according to the recorded plat. Barber v. Rorabeck, 36/399; Bunker v. Paquette, 37/80. Agricultural lands platted for partition only, in an unincorporated village, do not come within this provision. Bouchard v.Bourassa, 57/10. A city lot purchased with the intention of making a homestead, enclosed and used with that purpose in view, within a reasonable time, is exempt. Reske v. Reske, 51/541; Deville v. Widoe, 64/593, 596.

Fifteen hundred dollars.—This is a limitation. No homestead can be exempt as an entirety which, at the time it is first claimed as a homestead is worth a greater amount. Beecher v. Baldy, 7/488, 499.

Sale on execution.—This provision is an express prohibition against sale on execution of the homestead which it describes. Beecher v. Baldy, 7/488, 500; Robinson v. Baker, 47/622; Riggs v. Sterling, 60/651. The homestead is exempt from execution and sale on all judgments, whether founded on tort or in contract. Mertz v. Berry, 101/32, 37. A wife's desertion does not deprive the husband of this exemption. Pardo v. Bittorf, 48/275; Griffin v. Nichols, 51/575, 579. A house exempt as a homestead may be removed by the owner and not be subject to seizure and sale while in transit. Bunker v. Paquette, 37/79; Lozo v. Sutherland, 38/171. The exemption exists only against creditors. Robinson v. Baker, 47/619, 622; Patterson v. Patterson, 49/176. The conveyance of it by a debtor cannot be considered in fraud of creditors. Smith v. Rumsey, 33/183, 191 [modifying Herschfeldt v. George, 6/456]; creditors cannot complain of a voluntary conveyance of it by the owner during his last illness, though he left neither wife nor child. Eagle v. Smylie, 126/612.

Mortgage.—When husband and wife join in the execution of a mortgage of their homestead they renounce the benefit of the exemption as against the mortgage. Chamberlain v. Lyell, 3/448; Ring v. Burt, 17/465, 472. A mortgage of the homestead by the husband, without the wife's signature, is void. Dye v. Mann, 10/291, 298; Comstock v. Comstock, 27/97; Amplett v. Hibbard, 29/298; Watertown Ins. Co. v. G. & B. S. M. Co., 41/131; Sherrid v. Southwick, 43/515; Hammond v. Wells, 45/13; Shoemaker v. Collins, 49/595; Barrett v. Cox, 112/220, 222. Though expressly made subject to a life estate previously conveyed to the wife. Gadsby v. Monroe, 115/282. But a mortgage for purchase money is valid against the homestead without the wife's signature. Amphlett v. Hibbard, 29/298. When the premises are worth more than $1,500, a mortgage without the wife's signature is valid as to the residue, though void as to the homestead. Dye v. Mann, 10/291, 298.

Alienation.—Any conveyance of the homestead without the wife's signature is void. Dye v. Mann, 10/291, 298; McKee v. Wilcox, 11/358; Fisher v. Meister, 24/447; Snyder v. People, 26/110; Wallace v. Harris, 32/380; Webster v. Warner, 119/461, 462; Francis v. Francis, 122/10; Lott v. Lott, 146/580. Also a contract for conveyance. Stevenson v. Jackson, 40/702; Ring v. Burt, 17/465; Phillips v. Stauch, 20/369. But where the homestead is included in a larger tract, such deed is good as to the

residue. Dye v. Mann, 10/291; Wallace v. Harris, 32/380; Stevenson v. Jackson, 40/702; Hanchett v. McQueen, 32/22; Smith v. Rumsey, 33/183; Griffin v. Johnson, 37/87.

Waiver.—The exemption may be waived. Chamberlain v. Lyell, 3/448, 458; Beecher v. Baldy, 7/488, 506; Dye v. Mann, 10/291. But a married man cannot waive it without the consent of his wife. Beecher v. Baldy, 7/488, 506; Dye v. Mann, 10/291, 297. Temporary absence from the homestead is not a waiver. Bunker v. Paquette, 37/79, 80; Showers v. Robinson, 43/513; Pardo v. Bittorf, 48/275; Griffin v. Nichols, 51/579. Nor does the renting of a part of the homestead affect the right of exemption. Pardo v. Bittorf, 48/275. Or admitting boarders. Griffin v. Nichols, 51/579. See the whole subject of waiver considered in Riggs v. Sterling, 60/652.

To be liberally construed.—This exemption is not in derogation of the common law, but is rather the limitation and exclusion of that exemption which is not in accordance with the common law. Hence the rule of strict construction has no application here. Riggs v. Sterling, 60/643, 648. Exemption laws are to be liberally construed. Comstock v. Comstock, 27/101; Barber v. Rorabeck, 36/399; Bunker v. Paquette, 37/80; Lozo v. Sutherland, 38/171; Skinner v. Shannon, and cases cited, 44/86; Wilson v. Bartholomew, 45/43; Bouchard v. Bourassa, 57/10; Riggs v. Sterling, and cases cited, 60/648, 649; Eagle v. Smylie, 126/612; Corey v. Waldo, 126/706; Canney v. Canney, 131/363, 367.

Exemption after owner's death:

(187) SEC. 3. The homestead of a family after the death of the owner thereof, shall be exempt from the payment of his debts contracted after the adoption of this constitution, in all cases during the minority of his children.

Subject to the homestead right the lands are assets when needed for the payment of demands against the estate. Drake v. Kinsell, 38/232, 237. But is exempt from the payment of the owner's debts during the minority of his children. Kraft v. Kraft, 102/441. The homestead right does not attach in favor of a widow and children unless the estate is insolvent and in debt. Zoellner v. Zoellner, 53/620.

Exemption during widowhood:

(188) SEC. 4. If the owner of a homestead die, leaving a widow, but no children, the same shall be exempt, and the rents and profits thereof shall accrue to her benefit during the time of her widowhood, unless she be the owner of a homestead in her own right.

This section does not preclude the partition of the estate, but the widow's dower and homestead right should be saved in the homestead land whenever it can be done consistently with justice. Robinson v. Baker, 47/619. A widow whose child dies after her husband, and who marries again, loses the homestead right acquired through her former husband, though she retains her dower. Dei v. Habel, 41/88. Under this section she is entitled to the homestead interest so long as she remains a widow, if she has no other homestead in her own right. Koster v. Gillen, 124/149. The right attaches whether the estate be solvent or insolvent. In re Emmons Estate, 142/299, 308; Koster v. Gellen, 124/149; Eagle v. Smylie, 126/612.

Property rights of females:

(189) SEC. 5. The real and personal estate of every female, acquired before marriage, and all property to which she may afterwards become entitled, by gift, grant, inheritance or devise, shall be and remain the estate and property of such female, and shall not be liable for the debts, obligations or engagements of her husband, and may be devised or bequeathed by her as if she were unmarried.

This section does not empower a married woman to sell and dispose of her property without her husband's consent. Brown v. Fifield, 4/322. It stops short of giving her authority to contract and convey by instruments to operate inter vivos. Ransom v. Ransom, 30/328. As to the tenancy in lands conveyed to husband and wife jointly, see Fisher v. Provin, 25/347. This section and the provision of C. L. 8693 that "the husband of any married woman shall not be liable to be sued upon any contract made by such married woman in relation to her sole property," abrogate the common law, making a husband liable for his wife's ante-nuptial contracts. Smith v. Martin, 124/34.

ARTICLE XVII.

Militia:

(190) SECTION 1. The militia shall be composed of all able bodied male citizens, between the ages of eighteen and forty-five years, except such as are exempted by the laws of the United States or of this state; but all such citizens of any religious denomination whatever, who, from scruples of conscience, may be averse to bearing arms, shall be excused therefrom upon such conditions as shall be prescribed by law.

Amendment of 1869–70. The amendment dropped the word "white" out of the section, before the words "male citizens."

Organization, equipment and discipline:

(191) SEC. 2. The legislature shall provide by law for organizing, equip-

ping and disciplining the militia, in such manner as they shall deem expedient, not incompatible with the laws of the United States.

Officers of militia:

(192) SEC. 3. Officers of the militia shall be elected or appointed and be commissioned in such manner as may be provided by law.

ARTICLE XVIII.

MISCELLANEOUS PROVISIONS.

Oath of office:

(193) SECTION 1. Members of the legislature, and all officers, executive and judicial, except such officers as may by law be exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of ..... according to the best of my ability." And no other oath, declaration or test shall be required as a qualification for any office or public trust.

The term officer can be taken to refer to only such officers as have some degree of permanance and are not created by a temporary nomination for a single and transient purpose. Underwood v. McDuffee, 15/361, 366; Shurbun v. Hooper, 40/505. The oath required is the oath of allegiance to the United States and to the state and an oath to perform faithfully the duties of the office. Underwood v. McDuffee, 15/361, 366. As to political qualifications for appointment to office, see People v. Hurlbut, 24/44, 76, 91. The phrase "office of public trust" includes every important function of government. Att'y Gen. v. Detroit Com. Coun., 58/213. The Kent county primary election law—act 326 of 1903—requiring that before the name of any candidate could be placed on the primary election ballot, he should declare on oath his purpose to become a candidate, violated this section in precluding voters from choosing as a candidate one who declines himself to seek the office. Dapper v. Smith, 138/104.

Private property for public use:

(194) SEC. 2. When private property is taken for the use or benefit of the public, the necessity for using such property and the just compensation to be made therefor, except when to be made by the state, shall be ascertained by a jury of twelve freeholders, residing in the vicinity of such property, or by not less than three commissioners, appointed by a court of record, as shall be prescribed by law: *Provided*, The foregoing provision shall in no case be construed to apply to the action of commissioners of highways in the official discharge of their duty as highway commissioners.

Amendment of 1859–60. The amendment consisted in the addition of the proviso at the end of the section.

Compare this section with secs. 9 and 15 of art. xv and sec. 14 of this article. Compare also the citations under these four sections.

Necessity for using.—The jury must determine the necessity for taking the property. People v. Brighton, 20/57, 71; Horton v. Grand Haven, 24/465; McClary v. Hartwell, 24/139; Sheldon v. Kalamazoo, 24/383, 386; Arnold v. Decatur, 29/77; Powers' Appeal, 29/504, 509; Paul v. Detroit, 32/108, 113; Ayres v. Richards, 38/214; Bowler v. Drain Com'r, 47/154; M., H. & O. R. Co. v. Houghton Co. Prob. Judge, 53/217, 226; Grand Rapids v. G. R. & I. R. R. Co., 58/641, 645; Kundinger v. Saginaw 59/355; Pearsall v. Supervisors, 71/438, 445; Detroit v. Beecher, 75/454, 457, 468; Owosso v. Richfield, 80/328, 331; Hester v. Chambers, 84/562; Com'rs of Parks v. Moesta, 91/151. It must be a public necessity. M., C. & L. M. R. R. Co. v. Clark, 23/519, 523; G. R., N. & L. S. R. R. Co. v. Van Driele 24/409. And a real necessity. Detroit v. Daly, 68/503, 507. The object of the provision is to prevent the taking of private property for any purpose which is not shown, to the satisfaction of a jury, to be demanded by public convenience, or, to speak more accurately, by necessity. Power's Appeal, 29/504, 509. The parties have a full right to be heard on the question of necessity. Paul v. Detroit, 32/108. Opinions of witnesses are incompetent as to the necessity. Pontiac v. Lull, 111/509; Detroit v. Brennan, 93/338; Grand Rapids v. Bennett, 106/528.

Jury or commissioners.—This contemplates a jury of twelve. Campau v. Detroit, 14/276; McRae v. R. R. Co., 93/402. A common law jury, whose verdict cannot be impeached by the testimony of a member thereof. Wixom v. Bixby, 127/479. And the right to challenge for cause exists in all cases where the jury impaneled is a common law jury. Kundinger v. Saginaw, 59/355, 364. Must be freeholders. Owosso v. Richfield, 80/328, 331. And from the vicinage. City of Mt. Clemens v. Macomb Circuit Judge, 119/293. The vicinage in a street opening case may be limited to the municipality. Grand Rapids v. G. R. & I. R. R. Co., 58/641, 645. Must be impartial and disinterested. Kundinger v. Saginaw, 59/355, 357, 364; Hester v. Chambers, 84/562. The oath administered to the jurors must be co-extensive with the duty prescribed for them by the constitution and give the measure and limit of their legal action. Bowler v. Drain Com'r, 47/155; Power's Appeal, 29/504, 510; Owosso v. Richfield, 80/328, 331. Their verdict must be unanimous. C. & M. L. S. R. R. Co. v. Sandford, 23/418, 423; McRae v. R. R. Co., 93/399. But a majority of commissioners may determine the necessity for taking the property. Serrell v. Prob. Judge, 107/234. The jury are judges

of both law and fact. Railway Co. v. Dunlap, 47/456, 466. Distinct parcels owned by different persons may be condemned by the same jury. Kundinger v. Saginaw, 59/355, 358. A new jury may be impaneled upon a disagreement. Kress v. Hammond, 92/372, 374. The right to have a jury in condemnation proceedings is a substantial right that ought not to be prevented by any mere technicalities. Pt. H. & N. W. Ry. Co. v. Callanan, 61/12, 14; Grand Rapids v. Perkins, 78/93, 96. As to waiver of jury, see Pt. H. & N. W. Ry. Co. v. Callanan, 61/14; Borgman v. Detroit, 102/261, 263.

Proviso.—As to the purpose and effect of the proviso which was added in 1860, see Campau v. Detroit, 14/284; People v. Highway Com'rs, 15/352; Paul v. Detroit, 32/113; Truax v. Sterling, 74/165.

Mechanical trades in prisons:

(195) SEC. 3. Repealed.

This section provided that "no mechanical trade shall hereafter be taught to convicts in the state prison of this state, except the manufacture of those articles of which the chief supply for home consumption is imported from other states or countries," and was repealed by amendment of 1907.

Navigable streams:

(196) SEC. 4. No navigable stream in this state shall be either bridged or dammed without authority from the board of supervisors of the proper county under the provisions of law. No such law shall prejudice the right of individuals to the free navigation of such streams or preclude the state from the further improvement of the navigation of such streams.

Subject to this limitation and the limitation imposed by the constitution and laws of the United States, the legislature has the right to enact laws providing for the erection, maintenance and ownership of bridges over the streams of this state. Dietrich v. Schremms, 117/298, 302. The board of supervisors has ample authority under this section and C. L. 2494 to grant the right to construct a dam across a navigable stream. Valentine v. Water-Power Co., 128/280. If the stream is navigable for any purpose, the private rights of individuals are protected against arbitrary action by local authorities, who may only act when and in such way as the supervisors permit, and then not in contravention of private rights. Stofflet v. Estes, 104/208, 213. Such free use or navigation does not necessarily mean navigation of the streams in their natural condition unobstructed and unimpeded. Watts v. Tittabawassee Boom Co., 52/203, 211; Benjamin v. Manistee River Imp. Co., 42/634. This provision refers only to streams wholly within the state and relates only to the internal police of the state. Ryan v. Brown, 18/211. It has been understood as adopted in furtherance of the policy of the ordinance of 1787 as to navigable waters, and that has been considered as referring to navigation in its proper sense by some sort of boats used as means of carriage. Shepard v. Gates, 50/497. In some of the earlier editions of the constitution the word "abridged" was used instead of bridged, but the latter is the word adopted by the convention. Ryan v. Brown, 18/211.

Receipts and expenditures of public moneys:

(197) SEC. 5. An accurate statement of the receipts and expenditures of the public moneys shall be attached to, and published with the laws at every regular session of the legislature.

English language:

(198) SEC. 6. The laws, public records, and the written judicial and legislative proceedings of the state shall be conducted, promulgated and preserved in the English language.

Right to bear arms:

(199) SEC. 7. Every person has a right to bear arms for the defense of himself and the state.

Subordination of military:

(200) SEC. 8. The military shall in all cases, and at all times, be in strict subordination to the civil power.

Quartering soldiers:

(201) SEC. 9. No soldier shall, in time of peace, be quartered in any house without the consent of the owner or occupant, nor in time of war, except in a manner prescribed by law.

Right to assemble and petition:

(202) SEC. 10. The people have the right peaceably to assemble together to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances.

This section gives and was intended to give to the people the right to present their views to the legislature on any subject which is of legislative cognizance. State Tax Law Cases, 54/382.

Slavery and involuntary servitude:

(203) SEC. 11. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

Lease of agricultural land:

(204) SEC. 12. No lease or grant hereafter of agricultural land for a longer period than twelve years, reserving any rent or service of any kind, shall be valid.

Rights of aliens:

(205) SEC. 13. Aliens who are or who may hereafter become, *bona fide* residents of this state, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property, as native born citizens.

Private property for public use; private roads:

(206) SEC. 14. The property of no person shall be taken for public use without just compensation therefor. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damages to be sustained by the opening thereof shall be first determined by a jury of freeholders; and such amount, together with the expenses of proceedings, shall be paid by the person or persons to be benefited.

Compare this section with secs. 9 and 15 of art. xv and sec. 2 of this article. Compare also the citations under these four sections.

Private roads.—This is the only provision in the constitution that requires private benefits to be made the test of necessity and compels private property to bear the whole burden of a way. Paul v. Detroit, 32/112. Nothing but a clear practical necessity can, under our constitution, justify the taking of private property of one person to be used as a private road by another. It is not to be taken for mere convenience. The taking is justifiable only where no other way of access to the lands of the applicant can be found. Its use must be only commensurate with the necessity of the applicants and confined to them and the owner. Ayres v. Richards, 38/214, 216. A jury is indispensable in cases of private roads. Ayres v. Richards, 38/217.

Revision and compilation of laws:

(207) SEC. 15. No general revision of the laws shall hereafter be made. When a reprint thereof becomes necessary, the legislature in joint convention, shall appoint a suitable person to collect together such acts and parts of acts as are in force, and, without alteration, arrange them under appropriate heads and titles. The law so arranged shall be submitted to two commissioners appointed by the governor for examination, and if certified by them to be a correct compilation of all general laws in force, shall be printed in such manner as shall be prescribed by law.

The compiled laws have no force except as a compilation of existing statutes properly arranged but not altered. Stewart v. Riopelle, 48/178. As to previous revisions, see State Tax Law Cases, 54/450.

ARTICLE XIX.

UPPER PENINSULA.

Judicial district:

(208) SECTION 1. The counties of Mackinac, Chippewa, Delta, Marquette, Schoolcraft, Houghton and Ontonagon, and the islands and territory thereunto attached, the islands of lake Superior, Huron, and Michigan, and in Green Bay and the Straits of Mackinac and the River Ste. Marie, shall constitute a separate judicial district, and be entitled to a district judge and district attorney.

As to the authority of the legislature to abolish this arrangement, see Schedule, sec. 26. The district was abolished and the eleventh judicial circuit established in the upper peninsula by act 150 of 1863, p. 281.

Upper peninsula.—The constitution does not say that these counties and islands shall constitute the upper peninsula and it seems to distinguish the islands in the lakes from the islands attached to the counties named, which are upon the upper peninsula. Niles v. Judge, 102/331. Manitou county not a part of the upper peninsula within the meaning of act 142 of 1883. Id. 332. Bois Blanc island is not in the upper peninsula. Mays v. Shaffer, 89/460; Niles v. Judge, 102/332.

District judge:

(209) SEC. 2. The district judge shall be elected by the electors of such district, and shall perform the same duties and possess the same powers as a circuit judge in his circuit, and shall hold office for the same period.

See note to preceding section.

District Attorney:

(210) SEC. 3. The district attorney shall be elected every two years by the electors of the district, shall perform the duties of prosecuting attorney throughout the entire district, and may issue warrants for the arrest of offenders in cases of felony, to be proceeded with as shall be prescribed by law.

See note to sec. 1 of this article. The office of district attorney was abolished by act 191 of 1865, p. 320.

Representation in legislature:

(211) SEC. 4. Such judicial district shall be entitled at all times to at least one senator, and until entitled to more by its population, it shall have three members of the house of representatives, to be apportioned among the several counties by the legislature.

The upper peninsula has long since outgrown this provision. See apportionment acts.

Salaries and compensation:

(212) SEC. 5. The legislature may provide for the payment of the district judge a salary not exceeding one thousand dollars a year, and of the district attorney not exceeding seven hundred dollars a year; and may allow extra compensation to the members of the legislature from such territory, not exceeding two dollars a day during any session.

The first part of this section is now obsolete. As to extra compensation to upper peninsula members, see sec. 15, art. iv.

Elections in district:

(213) SEC. 6. That elections for all district or county officers, state senators or representatives, within the boundaries defined in this article, shall take place on the Tuesday succeeding the first Monday of November in the respective years in which they may be required. The county canvass shall be held on the first Monday thereafter, and the district canvass on the third Monday of said November.

Amendment of 1861–62. As originally adopted this section provided for elections in the upper peninsula on the last Tuesday in September; for a county canvass on the first Tuesday in October, and for a district canvass on the last Tuesday of October.

Refunding of specific taxes to counties:

(214) SEC. 7. One-half of the taxes received into the treasury from mining corporations in the upper peninsula, paying an annual state tax of one per cent shall be paid to the treasurers of the counties from which it is received, to be applied for township and county purposes, as provided by law. The legislature shall have power, after the year one thousand eight hundred and fifty-five, to reduce the amount to be refunded.

Specific taxes are not levied on mining corporations now.

State prison in upper peninsula:

(215) SEC. 8. The legislature may change the location of the state prison from Jackson to the upper peninsula.

The legislature never acted under this authority, but has located another prison at Marquette.

Charters of mining companies:

(216) SEC. 9. The charters of the several mining corporations may be modified by the legislature, in regard to the term limited for subscribing to stock, and in relation to the quantity of land which a corporation shall hold; but the capital shall not be increased, nor the time for the existence of charters extended. No such corporation shall be permitted to purchase or hold any real estate, except such as shall be necessary for the exercise of its corporate franchises.

This article of the constitution relates exclusively to the upper peninsula, and the mining companies referred to are those which were in existence by virtue of special charters at the time of the adoption of the constitution. Mason v. Perkins, 73/303, 317.

ARTICLE XIX-A.

RAILROADS.

Rates of passenger and freight transportation:

(217) SECTION 1. The legislature may, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on different railroads in this state, and shall prohibit running contracts between such railroad companies whereby discrimination is made in favor of either of such companies as against other companies owning connecting or intersecting lines of railroad.

This article was added to the constitution by amendment of 1870.

It is for the legislature and not for the courts to determine what are reasonable maximum rates for the different railroads of the state. Wellman v. Ry. Co., 83/592, 598. It seems that the effect of this amendment was not to limit the legislative authority over rates of transportation to the power to fix maximum rates. Smith v. L. S. & M. S. Ry. Co., 114/460.

Railroad consolidation:

(218) SEC. 2. No railroad corporation shall consolidate its stock, property, or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given of at least sixty days to all stockholders, in such manner as shall be provided by law.

ARTICLE XX.

AMENDMENT AND REVISION OF THE CONSTITUTION.

Amendments:

(219) SECTION 1. Any amendment or amendments to this constitution may be proposed in the senate or house of representatives. If the same shall be agreed to by two-thirds of the members elected to each house, such amendment or amendments shall be entered on the journals respectively, with the yeas and nays taken thereon, and the same shall be submitted to the electors at the next spring or autumn election thereafter, as the legislature shall direct; and if a majority of electors qualified to vote for members of the legislature voting thereon shall ratify and approve such amendment or amendments, the same shall become part of the constitution.

Amendment of 1875–76. The amendment consisted in striking out "general," before "election," and inserting "spring or autumn" in lieu thereof; and inserting "as the legislature shall direct." The meaning of "general election" was confined to the biennial November election for state officers. Westinghausen v. People, 44/265.

Under this section as it now stands, amendments to the constitution take effect from the time of their ratification by the people. Mining Co. v. Osmun, 82/573; In re Joslyn's Estate, 117/442. The entry in the journal of the house of a proposed amendment, and the amendments thereto adopted, before it was finally approved, constituted a sufficient entry on the journal. People v. Loomis, 135/556. A recently amended section of the constitution does not stand alone. It becomes a part of that instrument and must be construed with the whole thereof. People v. Burch, 84/414.

General revision:

(220) SEC. 2. At the general election to be held in the year one thousand eight hundred and sixty-five, and in each sixteenth year thereafter, and also at such other times as the legislature may by law provide, the question of the general revision of the constitution shall be submitted to the electors qualified to vote for members of the legislature, and in case a majority of the electors so qualified, voting at such election, shall decide in favor of a convention for such purpose, the legislature, at the next session, shall provide by law for the election of such delegates to such convention. All the amendments shall take effect at the commencement of the year after their adoption.

Amendment of 1861–62. The amendment consisted in striking out the word "political," before the word "year," where it last occurs.

SCHEDULE.

(221) That no inconvenience may arise from the changes in the constitution of this state, and in order to carry the same into complete operation, it is hereby declared that

The schedule was intended to provide for temporary and not for future and permanent purposes. It cannot be given a permanent operation in any case where any other interpretation is reasonable. Douvielle v. Manistee Supervisors, 40/585, 588.

Common and statute laws:

(222) SECTION 1. The common law and the statute laws now in force, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are altered or repealed by the legislature.

Legal proceedings saved:

(223) SEC. 2. All writs, actions, causes of action, prosecutions and rights of individuals, and of bodies corporate, and of the state, and all charters of incorporation, shall continue, and all indictments which shall have been found or which may hereafter be found, for any crime or offense committed before the adoption of this constitution, may be proceeded upon as if no change had taken place. The several courts, except as herein otherwise provided, shall continue with the like powers and jurisdiction, both at law and in equity, as if this constitution had not been adopted, and until the organization of the judicial department under this constitution.

Fines, penalties, escheats, etc., saved:

(224) SEC. 3. That all fines, penalties, forfeitures and escheats, accruing to the state of Michigan under the present constitution and laws, shall accrue to the use of the state under this constitution.

Recognizances, etc., saved; penal actions continued:

(225) SEC. 4. That all recognizances, bonds, obligations, and all other instruments entered into or executed before the adoption of this constitution, to the people of the state of Michigan, to any state, county or township, or any public officer, or public body, or which may be entered into or executed, under existing laws, "to the people of the state of Michigan," to any such officer or public body, before the complete organization of the departments of government under this constitution, shall remain binding and valid; and the rights and liabilities upon the same shall continue and may be prosecuted as provided by law. And all crimes and misdemeanors and penal actions shall be tried, punished and prosecuted as though no change had taken place, until otherwise provided by law.

Governor and lieutenant governor:

(226) SEC. 5. A governor and lieutenant governor shall be chosen under the existing constitution and laws to serve after the expiration of the term of the present incumbent.

State officers, continued:

(227) SEC. 6. All officers, civil and military, now holding any office or appointment, shall continue to hold their respective offices, unless removed by competent authority, until superseded under the laws now in force, or under this constitution.

Senators and representatives continued:

(228) SEC. 7. The members of the senate and house of representatives of the legislature of one thousand eight hundred and fifty-one shall continue in office under the provisions of law, until superseded by their successors, elected and qualified under this constitution.

County and township officers continued:

(229) SEC. 8. All county officers, unless removed by competent authority, shall continue to hold their respective offices until the first day of January, in the year one thousand eight hundred and fifty-three. The laws, now in force as to the election, qualification and duties of township officers, shall continue in force until the legislature shall, in conformity to the provisions of this constitution, provide for the holding of elections to fill such offices, and prescribe the duties of such officers, respectively.

Expiration of judicial terms:

(230) SEC. 9. On the first day of January, in the year one thousand eight hundred and fifty-two, the terms of office of the judges of the supreme court, under existing laws, and of the judges of the county courts, and of the clerks of the supreme court, shall expire, on the said day.

Proceedings pending in courts:

(231) SEC. 10. On the first day of January, in the year one thousand eight hundred and fifty-two, the jurisdiction of all suits and proceedings then pending in the present supreme court shall become vested in the supreme court established by this constitution, and shall be finally adjudicated by the court where the same may be pending. The jurisdiction of all suits and proceedings at law and equity then pending in the circuit courts and county courts for the several counties, shall become vested in the circuit courts of the said counties and district court for the upper peninsula.

Probate, justices' and police courts:

(232) SEC. 11. The probate courts, the courts of justices of the peace, and the police court, authorized by an act entitled "An act to establish a police court in the city of Detroit, approved April second, one thousand eight hundred and fifty," shall continue to exercise the jurisdiction and powers now conferred upon them, respectively, until otherwise provided by law.

Office of state printer:

(233) SEC. 12. The office of state printer shall be vested in the present incumbent until the expiration of the term for which he was elected under the law then in force; and all the provisions of the said law relating to his duties, rights, privileges and compensation shall remain unimpaired and inviolate until the expiration of his said term of office.

Adaptation of laws to constitution:

(234) SEC. 13. It shall be the duty of the legislature at their first session to adapt the present laws to the provisions of this constitution as far as may be.

Attorney general to report changes:

(235) SEC. 14. The attorney general of the state is required to prepare and report to the legislature at the commencement of the next session such changes and modifications in existing laws as may be deemed necessary to adapt the same to this constitution, and as may be best calculated to carry into effect its provisions, and he shall receive no additional compensation therefor.

Attached territory:

(236) SEC. 15. Any territory attached to any county for judicial purposes if not otherwise represented, shall be considered as forming part of such county, so far as regards elections for the purpose of representation.

Submission to people:

(237) SEC. 16. This constitution shall be submitted to the people for their

adoption or rejection at the general election to be held on the first Tuesday of November, one thousand eight hundred and fifty; and there shall also be submitted for adoption or rejection at the same time the separate resolution in relation to the elective franchise; and it shall be the duty of the secretary of state and all other officers, required to give or publish any notice in regard to the said general election, to give notice, as provided by law in case of an election of governor, that this constitution has been duly submitted to the electors at said election. Every newspaper within this state publishing in the month of September next this constitution as submitted shall receive, as compensation therefor, the sum of twenty-five dollars to be paid as the legislature shall direct.

Qualification to vote:

(238) SEC. 17. Any person entitled to vote for members of the legislature, by the constitution and laws now in force, shall at the said election be entitled to vote for the adoption or rejection of this constitution, and for or against the resolution separately submitted, at the places and in the manner provided by law for the election of members of the legislature.

Form of ballots:

(239) SEC. 18. At the said general election a ballot box shall be kept by the several boards of inspectors thereof for receiving the votes cast for or against the adoption of this constitution; and on the ballots shall be written or printed or partly written and partly printed, the words "Adoption of the Constitution—Yes," or "Adoption of the Constitution—No."

Canvass and return; beginning of terms of office:

(240) SEC. 19. The canvass of the votes cast for the adoption or rejection of this constitution, and the provision in relation to the elective franchise separately submitted, and the returns thereof shall be made by the proper canvassing officers, in the same manner as now provided by law for the canvass and return of the votes cast at any election for governor, as near as may be, and the return thereof shall be directed to the secretary of state. On the sixteenth day of December next, or within five days thereafter, the auditor general, state treasurer, and secretary of state shall meet at the capitol, and proceed, in the presence of the governor, to examine and canvass the returns of the said votes, and proclamation shall forthwith be made by the governor of the result thereof. If it shall appear that a majority of the votes cast upon the question have thereon "Adoption of the Constitution—Yes," this constitution shall be the supreme law of the state from and after the first day of January, one thousand eight hundred and fifty-one, except as is herein otherwise provided; but if a majority of the votes cast upon the question have thereon "Adoption of the Constitution—No," the same shall be null and void. And in case of the adoption of this constitution, said officers shall immediately, or as soon thereafter as practicable, proceed to open the statements of votes returned from the several counties for judges of the supreme court and state officers under the act entitled "An act to amend the revised statutes and to provide for the election of certain officers by the people in pursuance to an amendment of the constitution," approved February sixteenth, one thousand eight hundred and fifty, and shall ascertain, determine and certify the results of the election for said officers under said act, in the same manner as near as may be, as is now provided by law in regard to the election of representatives in congress. And the several judges and officers so ascertained to have been elected may be qualified and enter upon the duties of their respective offices on the first Monday of January next or as soon thereafter as practicable.

Salaries continued:

(241) SEC. 20. The salaries or compensation of all persons holding office under the present constitution shall continue to be the same as now provided by law, until superseded by their successors elected or appointed under this constitution; and it shall not be lawful hereafter for the legislature to increase or diminish the compensation of any officer during the term for which he is elected or appointed.

Convention expenses:

(242) SEC. 21. The legislature at their first session shall provide for the payment of all expenditures of the convention to revise the constitution and of the publication of the same as is provided in this article.

County representation in legislature:

(243) SEC. 22. Every county except Mackinaw and Chippewa entitled to a representative in the legislature, at the time of the adoption of this constitution shall continue to be so entitled under this constitution, and the county of Saginaw, with the territory that may be attached, shall be entitled to one representative; the county of Tuscola, and the territory that may be attached, one representative; the county of Sanilac, and the territory that may be attached, one representative; the counties of Midland and Arenac, with the territory that may be attached, one representative; the county of Montcalm, with the territory that may be attached thereto, one representative; and the counties of Newaygo and Oceana, with the territory that may be attached thereto, one representative; each county having a ratio of representation, and a fraction over, equal to a moiety of said ratio, shall be entitled to two representatives; and so on above that number, giving one additional member for each additional ratio.

The provision as to each county having a ratio of representation and a fraction over equal to a moiety of such ratio being entitled to two representatives, etc., is a permanent limitation on the power of the legislature. Hunt v. Buhrer, 133/107, 110; Houghton Co. Supervisors v. Secretary of State, 92/638.

Chancery causes pending:

(244) SEC. 23. The cases pending and undisposed of in the late court of chancery, at the time of the adoption of this constitution, shall continue to be heard and determined by the judges of the supreme court. But the legislature shall at its session in one thousand eight hundred and fifty-one provide by law for the transfer of said causes that may remain undisposed of on the first day of January, one thousand eight hundred and fifty-two, to the supreme or circuit court established by this constitution, or require that the same may be heard and determined by the circuit judges.

Commencement of gubernatorial term:

(245) SEC. 24. The term of office of the governor and lieutenant governor shall commence on the first day of January next after their election.

Election of regent in upper peninsula:

(246) SEC. 25. The territory described in the article entitled "Upper Peninsula," shall be attached to and constitute a part of the third circuit for the election of a regent of the university.

This section is now obsolete.

District judge and attorney may be abolished:

(247) SEC. 26. The legislature shall have authority after the expiration of the term of office of the district judge first elected for the "Upper Peninsula," to abolish said office of district judge and district attorney or either of them.

Reapportionment:

(248) SEC. 27. The legislature shall, at its session of one thousand eight hundred and fifty-one, apportion the representatives among the several counties and districts, and divide the state into senate districts pursuant to the provisions of this constitution.

Beginning of official terms:

(249) SEC. 28. The terms of office of all state and county officers, of the circuit judges, members of the board of education, and members of the legislature shall begin on the first day of January next succeeding their election.

This section was not a permanent limitation on the power of the legislature and did not prohibit the enactment of act 294 of 1895, making the term of the Wayne county treasurer begin on July 1. Hunt v. Buhrer, 133/107.

Judicial circuits:

(250) SEC. 29. The state, exclusive of the upper peninsula, shall be divided into eight judicial circuits, and the counties of Monroe, Lenawee and Hillsdale shall constitute the first circuit; the counties of Branch, St. Joseph, Cass and Berrien shall constitute the second circuit; the county of Wayne shall constitute the third circuit; the counties of Washtenaw, Jackson and Ingham shall constitute the fourth circuit; the counties of Calhoun, Kalamazoo, Allegan, Eaton and Van Buren shall constitute the fifth circuit; the counties of St. Clair, Macomb, Oakland and Sanilac shall constitute the sixth circuit; the counties of Lapeer, Genesee, Saginaw, Shiawassee, Livingston, Tuscola, and Midland shall constitute the seventh circuit; and the counties of Barry, Kent, Ottawa, Ionia, Clinton and Montcalm shall constitute the eighth circuit.

This section is now obsolete.

Done in convention at the capital of the state this fifteenth day of August in the year of our Lord one thousand eight hundred and fifty and of the independence of the United States the seventy-fifth.

D. GOODWIN,
President.

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